(16)

Office - Supreme Court, U. S.
FILED
JUN 13 1941
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 163

314-637

JOSEPH OBERGFELL, PETER BOLLENBACHER, ALBERT J. KUGLER, INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL AND SOFT DRINK WORKERS OF AMERICA, ET AL.,

Petitioners,

vs.

WILLIAM GREEN, FRANK MORRISON, JOHN COEFIELD, THE AMERICAN FEDERATION OF LABOR AND THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, STABLEMEN AND HELPERS, ET AL.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA AND BRIEF IN SUPPORT THEREOF.

MARTIN F. O'DONOGHUE,
WILLIAM J. HUGHES, JR.,
THOMAS X. DUNN,
NICHOLAS J. CHIASCIONE,
Counsel for Petitioners.

INDEX.

Subject Index.

	Page
Petition for writ of certiorari	1
Jurisdiction	1
Opinions below	2
Summary statement of matter involved	2
Questions presented	5
Statement of facts	8
Reasons relied on for the allowance of the writ	13
Brief in support of petition	19
I. Appellate court misconceived the issues in the case	19
II. The so-called "decision" of the A. F. of L. results in the transfer of men, against their will, from one union to another	21
III. Nature and structure of the A. F. of L.	24
IV. Recent declaration of powers by the A. F. of L. in I. T. U. case directly contrary to decision below	31
V. Section 11 of Article IX of the Federation's Constitution protects the established trade jurisdiction of the Brewery Workers Union	33
VI. Gross errors in the opinion of the court below	39
VII. The importance of the international working agreement of 1915	45
VIII. No "labor dispute" being involved the La-Guardia Act does not apply	48
IX. The A. F. of L. should rightly be estopped from dismembering petitioners' union	50
Conclusion	51

Table of Cases Cited.

Axton-Fisher, In re, 1 N. L. R. B. 604	11
Federal Trade Commision v. *Algoma Lumber Co.*, 291 U. S. 67	17, 39

Page

Gompers v. *Buck Stove & Range Co.*, 33 App. D. C. 516 26
International Brotherhood of Teamsters v. *International Union of United Brewery Workers*, 106 F. (2d) 871 11
LaRoe v. *Possehl*, 156 Misc. 476 48
Virginian Rwy. v. *System Federation*, 300 U. S. 515 49

OTHER AUTHORITIES CITED.

Judicial Code, Section 240(a), as amended by the Act of February 13, 1925 1
LaGuardia Act, Sec. 7 7
Rule 52(a) of the Rules of Civil Procedure 17

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 163

JOSEPH OBERGFELL, PETER BOLLENBACHER, ALBERT J. KUGLER, INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL AND SOFT DRINK WORKERS OF AMERICA, ET AL.,

vs. *Petitioners,*

WILLIAM GREEN, FRANK MORRISON, JOHN COEFIELD, THE AMERICAN FEDERATION OF LABOR AND THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, STABLEMEN AND HELPERS, ET AL.,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

Petitioners, all the appellees below, respectfully pray for the issuance of a Writ of Certiorari to review the judgment below setting aside a Declaratory Judgment and an Injunction.

Jurisdiction.

The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code as amended by the Act of

February 13, 1925. The judgment below was entered March 17, 1941 (R. 2797), a petition for rehearing filed March 31, 1941 being denied May 15, 1941 (R. 2826). The Court below entered a stay of its mandate May 15, 1941 for thirty days, pending application for writ of certiorari, and until such further time as this Court required to dispose of a Petition for a Writ of Certiorari (R. 2826).

Opinions Below.

The opinion of the Trial Court will be found at R. 1642, the Trial Court's Findings of Fact Numbers 1-67, R. 1672-1690, and the Conclusions of Law Numbers 1-20, R. 1690-1692. The opinion of the Court below will be found in the record at R. 2769.

The opinion of the Trial Court is reported in 29 Fed. Supp. 589; that of the Court below in — F. (2d) —.

Summary Statement of Matter Involved.

Trial Court's Decision:

The Trial Court granted a Declaratory Judgment (R. 2689-90) to the effect that under its contract of affiliation with the Brewery Workers Union, the A. F. of L. was obligated to protect the trade jurisdiction that the Brewery Workers Union possessed prior to its affiliation in 1887, and that the A. F. of L. had no power to transfer the trade jurisdiction of the Brewery Workers Union over beer drivers to the Teamsters Union. The Trial Court held further in effect that such an order would result in the transfer (Finding of Fact 39, R. 1683) against their will of some 15,000 beer drivers (the balance of 35,000 in the Brewery Workers Union being brewers, maltsters, bottlers, etc.) from the Brewery Workers Union to the Teamsters Union,[1] thus

[1] The A. F. of L. in 1934 took a referendum vote of the Brewery Workers as provided by Section X of the Brewery Workers Constitution (R. 1682-3) and 99.7% voted to remain in the Brewery Workers Union, but in spite of this, the A. F. of L. went ahead with the transfer.

destroying their interests in closed-shop collective bargaining agreements, and depriving them of death, sick, strike and out-of-work benefits (Conclusions of Law 17, R. 1692). The Trial Court, therefore, enjoined officers of the A. F. of L. and the Teamsters Union from breaching the contract (R. 1668-1671).

Injunction Reversed:

The D. C. Court of Appeals reversed, holding the injunction invalid on the ground that the LaGuardia Act applied, and the findings as to police protection were insufficient (R. 2774-5). The Court also held there was no formal finding of notice to these police officials, as to which Mr. Justice Stephens dissented. Likewise he dissented from the holding that formal findings must be made *prior* to the injunction even if later findings were adequate (R. 2796).

Declaratory Judgment Reversed:

In spite of the referendum vote of 99.7% of the Brewery Workers to remain in the Brewery Workers Union (no mention of this fact was made in the opinion below) and the public policy of the Wagner Act establishing the workers' right to belong to the union of their own choice, the Court below held that the A. F. of L. had the power, under its Constitution, to alter "membership jurisdiction" (R. 2782, 2793) pursuant to a "large and comprehensive plan for the protection and benefit of toiling millions of laborers" (R. 2781) and pursuant to the "large objectives" (R. 2793) of the A. F. of L. to form a "more perfect federation" (R. 2781), to decide that

> "Teamsters and chauffeurs in the brewery industry properly belong to and come under the jurisdiction of the International Brotherhood of Teamsters" (R. 2770).

The Court below, overturning Findings of Fact by the Trial Court, held squarely that the A. F. of L. had full control over "membership jurisdiction" of its constituent autonomous international unions and had full power inherently (R. 2779, 2786, 2793) and flowing from the absence of prohibition in its constitution, to decide to which of two A. F. of L. unions beer drivers should belong and to enforce its decision "by any proper action" (R. 2794). The Court below thereupon reversed the Declaratory Judgment (R. 2797).

Petitioners' position below and here is that the decision of the A. F. of L. was invalid and was an order of transfer of beer drivers from one union to another, an order which the A. F. of L., under its Constitution, had no power to make and which the Brewery Workers Union had no power, or even machinery, under its own Constitution, to put into effect. An inspection of the Constitution of the Brewery Workers Union (R. 1809) shows that it has no power whatever to force beer drivers to transfer from the Brewery Workers Union to the Teamsters Union (see Opinion of Trial Court, R. 1665). If such an order were carried out, it was proved at the trial that the beer drivers would lose sick, death, strike, and out-of-work benefits and their interest in collective bargaining agreements in being compelled to leave the union of their choice and join the Teamsters Union (Finding of Fact 59, R. 1689).

Respondents, on the other hand, claim that if dissatisfied with the order the Brewery Workers Union, composed of 15,000 beer drivers and 35,000 brewers, maltsters, bottlers, etc., could simply withdraw from the A. F. of L. and continue as an independent union. In that event by reason of the superior economic and organizational power of the A. F. of L. and the Teamsters Union (300,000 strong) the result would be the destruction of the Brewery Workers Union and their numerous collective bargaining agreements. Thus the

facts show a complete destruction of the beer drivers' rights to belong to the union of their own choice and a confiscation of their property rights. Hence the case presents the following questions:

Questions Presented.

(1) Has the A. F. of L. power under its Constitution to enter an order transferring jurisdiction over beer drivers from the Brewery Workers Union (which had it since 1886) to the Teamsters Union and to carry it into effect so as to force a transfer of men from one union to another.

(2) Is not such a Constitutional interpretation where it compels the transfer of men from one union to the other against their will and thus destroys rights of liberty and property, collective bargaining agreements, etc., so oppressive and unreasonable and in violation of the public policy of the Wagner Act and the LaGuardia Act, and the law generally, that a court must hold it void. Is not the A. F. of L. estopped by acquiesence for 54 years and by submitting the question to a Referendum vote of the Brewery Workers Union in 1934.

(3) Is it a defense to the illegality of such a Constitutional interpretation and an order based on it for the A. F. of L. to contend the Union can resign from the A. F. of L. (or be expelled), when this would destroy the right to belong to a union of one's own choice and likewise destroy the workers actual jobs, their interests in collective bargaining agreements and other property rights. It should be stated that petitioners do not contend that they have a right to remain in the A. F. of L. under any and all circumstances. Their contention is that if the order is invalid, either under the Constitution of the A. F. of L. or the law of the land, they have the usual right of an affiliated union to enjoin such

breach and to remain part of the A. F. of L. in accordance with their contract of affiliation.

(4) Assuming but not conceding the A. F. of L. had power to make the order, power to enforce it and that under the law of the land both are not illegal in operating as a practical transfer of men from one union to another against their will, the following additional questions arise:

(5) Did the A. F. of L. *validly exercise* the power when it arrived at its decision not upon a true state of facts but on a false state of facts arising from the denial on the floor of the Convention by Tobin, President of the Teamsters Union (Finding of Fact 33, R. 1681-2) of the existence of the International Working Agreement between the Brewery Workers Union and the Teamsters Union of February 15, 1915, wherein the Teamsters Union conceded that as between the two unions jurisdiction over beer drivers was in the Brewery Workers Union and not in the Teamsters Union. Tobin even went so far as to say if any such agreement was produced his signature on it was a clever forgery (Finding of Fact 34, R. 1682). Later, however, in an affidavit filed in the Trial Court below Tobin admitted not only the existence of the Agreement and that he had signed it, but that he had actually had it ratified by his own Union's Convention (R. 40). The Trial Court held that if Tobin had admitted the existence of the Agreement on the floor of the Convention the order of the 1933 Convention would probably not have been passed (R. 1665).

Justice Miller's opinion below *makes no mention* of this decision of the matter by the A. F. of L. on a false state of facts induced by the fraud of one of the parties though the Trial Court made a specific Finding of Fact to this effect (Finding of Fact 33, R. 1681; Opinion, R. 1665). Hence the question arises whether this is not of itself an independent ground of decision adequate to support the Trial Court's

judgment that the order of transfer was invalid and so requiring affirmance. As part of this question there is likewise the question whether the conclusion of the Court below that the A. F. of L. was not, under its Constitution, required to respect a solemn Agreement of 19 years standing and operation, was correct. There is the further question whether the Court below was correct in holding the International Working Agreement of 1915 was no agreement at all on the ground that it had no expiration date (R. 2792-3) and was otherwise invalid.

(6) As the Court below has overturned almost every substantial Finding of Fact on the constitutional powers of the A. F. of L. drawn from its history and conduct, ignoring the 1933 Constitution, and making its own appraisal of the testimony among uncertain and conflicting inferences, the question arises whether the court below has not violated Rule 52(a) of the Rules of Civil Procedure prohibiting such action unless such findings are clearly erroneous.

(7) Whether the Court below was not wrong in finding that a labor dispute was involved within the meaning of the LaGuardia Act and even if it was right in this, whether it was wrong (after conceding that all the other Findings required by the LaGuardia Act as to force and violence, irreparable injury, etc. were present) in holding a Chief of Detectives was not the "chief of those public officials" etc. within the meaning of Section 7 of the LaGuardia Act—again overturning a specific Finding of Fact of the Trial Court (Finding of Fact 48, R. 1685-6; Finding of Fact 65, 66, R. 1689-90). Likewise was formal notice required if the police official testified and where the court adopts its opinion as LaGuardia Act findings cannot amended findings be filed later (R. 1667). Petitioners contend the LaGuardia Act is in no way applicable but that if applicable the findings below were adequate or could be made adequate.

Statement of Facts.

Teamsters Forty (40) Year Effort to Obtain Beer Drivers:

The Brewery Workers Union, now composed of 15,000 beer drivers and 35,000 brewers, maltsters, etc., joined the A. F. of L. in 1887, the Teamsters Union in 1899 (R. 1672). At the time the Brewery Workers Union joined the A. F. of L. The Brewery Workers Union had been in existence since 1872 and had organized the Brewery Workers of America into a compact union which, in 1933, had closed-shop collective bargaining agreements covering 98% of the breweries of the United States (Finding of Fact 49, R. 1686). The industry had enjoined industrial peace for 50 years (R. 777, 780).

In contrast, the Teamsters Union did not, at the time of its affiliation have in its membership beer drivers, as all beer drivers were members of the Brewery Workers Union (Finding of Fact 6, R. 1672). In spite of this in 1900 the Teamsters claimed jurisdiction (within the A. F. of L.) over beer drivers and asked that the Federation order all beer drivers who were members of the Brewery Workers Union to transfer their membership to the Teamsters Union (R. 492). The 1900 Convention held that it could not by resolution or otherwise order the transfer of men from one organization to the other without their consent and further held that the prior right (within the A. F. of L.) of a prior affiliated union over a later incoming union should be protected (Finding of Fact 14, R. 1674), in accordance with the Constitution of the A. F. of L. which guaranteed to protect the established trade jurisdiction of its affiliated unions against any encroachment (Findings of Fact 9, 10, R. 1672-1673). In spite of this the Teamsters Union over a period of 30 years, made continued efforts to have the A. F. of L. order the beer drivers transferred from the Brewery Workers Union to the Teamsters Union.

Hence, under the Constitution of the Brewery Workers Union, the beer drivers if transferred would lose all their sick, death, strike, and out-of-work benefits built up over a period of years in the Brewery Workers Union, and of course all their interest in hundreds of closed-shop collective bargaining agreements.

The 1915 Working Agreement:

On February 15, 1915, peace was made between the two unions by an International Working Agreement signed by Tobin, president of the Teamsters Union, and Hughes, secretary-treasurer, and likewise signed by Obergfell, president of the Brewery Workers Union, under which mutual concessions were made by the two unions and the Teamsters agreed that beer drivers should come under the jurisdiction of the Brewery Workers Union (Finding of Fact 27, R. 1678-1680).

The 1933 Order of Transfer:

Matters stood thus until March 31, 1933, when suddenly out of a clear sky William Green, president of the A. F. of L., notified the president of the Washington State Federation of Labor that jurisdiction over beer drivers was in the Teamsters Union (R. 1683-1684). He followed this up by a letter dated April 10, 1933, citing the Brewery Workers Union to appear before the Executive Council on April 20, 1933, to show cause why the Teamsters did not have jurisdiction over beer drivers (R. 1680). The Brewery Workers Union appeared, asserted their jurisdiction, and protested against the Executive Council or the Federation having any power to transfer beer drivers in violation of the contract of affiliation and in violation of the International Working Agreement with the Teamsters of February 15, 1915. At the hearing before the Executive Council Tobin denied the existence of this Agreement although the orig-

inal was submitted and when the Executive Council, having ruled against the Brewery Workers, brought the matter before the Convention, Tobin again solemnly denied the existence of the International Working Agreement of 1915 and stated that if his signature appeared upon any such agreement it was clever forgery (Findings of Fact 31, 32, 33, and 34, R. 1680-1682). The Convention thereupon and probably for this reason, in the opinion of the Trial Court (R. 1665), held that jurisdiction over beer drivers was in the Teamsters Union (R. 414). Tobin admitted in an affidavit filed at the present trial not only that he signed the Agreement but that he had it ratified by the Teamsters' Convention.

Referendum Vote Ignored; A. F. of L. Carries Out Order of Transfer:

In 1934 William Green, president of the A. F. of L., conducted a referendum vote of all Brewery Workers on the question of the transfer of beer drivers. This was in accordance with Article X of the Brewery Workers' Constitution (R. 1869-70). The Brewery Workers voted 99.7% to remain in the Brewery Workers Union and not to be compelled to join the Teamsters Union (Findings of Fact 35, 36, and 37, R. 1682-1683). In spite of this Green continued to enforce the transfer of beer drivers from the Brewery Workers Union to the Teamsters Union (Findings of Fact 38-39, R. 1683). To that end Green notified all State Federations and Central Labor Bodies and all National and International Unions of the decision and advised them to see to it that it was complied with and carried out. The A. F. of L. further advised State Federations of Labor and Central Labor Bodies to suspend and expel all Local Brewery Workers Unions affiliated with them if they did not comply with the decision of the A. F. of L. in awarding jurisdiction over beer drivers to the Teamsters Union

(Finding of Fact 39, R. 1683). In addition the Federation advised the brewery owners who had collective bargaining agreements with the Brewery Workers Union that thereafter they must deal exclusively with the Teamsters Union with regard to beer drivers, irrespective of the wishes of the beer drivers, and not to enter any further collective bargaining agreements with the Brewery Workers Union (Finding of Fact 40, R. 1682-1684).

Teamsters Likewise Put A. F. of L. Order Into Effect:

Citing the Federation's decision, the Teamsters approached brewery owners all over the country and demanded that they cooperate with the Teamsters in putting the decision into effect. They demanded that the beer drivers should join the Teamsters Union in default of which the Breweries should discharge them. In the event the Breweries refused to comply, the Teamsters picketed the plant and placed the brewery's products on the Unfair List (Findings of Fact 41, 42, 43, R. 1684). When the beer drivers refused to comply the Teamsters entered into agreements with various employers in the Far West under which the breweries discharged their beer drivers and employed Teamsters as beer drivers.[2] When the employers refused to accede, the Teamsters placed a secondary boycott on all their products and refused to ship them in interstate commerce or otherwise. The program of the Teamsters led to violence in many States and members of the Brewery Workers Union were beaten up with brass knuckles and lead pipe, their trucks bombed, etc. (Findings of Fact 44, 45, 46, R. 1684-85). The Court found all the above facts against the

[2] The Brewery Workers Union made this the basis of charges before the NLRB under the NRA Act. The Board held it had no jurisdiction, both the unions involved being A. F. of L. unions. The present NLRB takes the same position. *International Brotherhood of Teamsters* v. *International Union of United Brewery Workers,* 106 F. (2d) 871; *In re Axton-Fisher,* 1 NLRB 604.

Teamsters and conversely found as a fact that the evidence failed to show that the Brewery Workers Union had committed unlawful acts of any kind (Finding of Fact 47, R. 1685).

The Chief of Detectives of Portland, Oregon, testified that the local police authorities were unable to give adequate protection by reason of various acts of assault and violence, bombing of trucks and taverns, breaking of windows and puncturing of tires, etc. (Finding of Fact 48, R. 1685-1686).

The above evidence as to violence was to show the *effect* of the illegal order as enforced.

Continuing and Irreparable Injury to Brewery Workers Union:

Due to these coercive activities of the A. F. of L. and the Teamsters Union not only beer drivers, but brewers, maltsters, bottlers, etc., were discharged by the employers (Finding of Fact 52, R. 1687), and the interest of the workers in the closed-shop collective bargaining agreements the Brewery Workers had with over 98% of the breweries in the United States was destroyed (Finding of Fact 49, R. 1686; Findings of Fact 54-55, R. 1688). Likewise, as a result of these activities the Brewery Workers Union was compelled to pay strike and lock-out benefits in Tacoma, Washington, in the amount of $27,136; $161,589 in Spokane; $125,523 in Seattle; $182,064 in Portland; and $159,966 in Cleveland, Ohio. The Trial Court found as a fact that these sums were paid out by the Brewery Workers Union in accordance with its Constitution because the men were discharged from employment when they refused to quit their own Union and join the Teamsters (Finding of Fact 51, R. 1686-1687). Respondents coercive activities continued up to and during the actual trial of the present case, June 3, 1939 (R. 806-807). The Trial Court made extensive Findings of Fact

that the coercive violation of petitioners' rights was a continuing condition (Findings of Fact 49, 50, 51, R. 1687-9; 1692).

Unable to obtain any relief in the A. F. of L., the Brewery Workers Union, one of its locals and a *member* of one of its locals, filed the present suit asking for an injunction and a declaratory judgment, the injunction to restrain the A. F. of L. and its officials from violating the contract of affiliation between the A. F. of L. and the Brewery Workers Union made under the Constitution of the A. F. of L., under which contract the A. F. of L. was required to protect the trade jurisdiction *already possessed* by the Brewery Workers Union prior to affiliation with the A. F. of L., and likewise to restrain the A. F. of L. and its officials from promoting the breach by the Teamsters of the International Working Agreement of February 15, 1915. Also the Court was asked to restrain the Teamsters Union and its officials in the above respects. The Declaratory Judgment was to declare in favor of the Brewery Workers Union the rights under contracts thus sued on.

Declaratory Judgment and Injunction Granted.

As already indicated the Trial Court granted a Declaratory Judgment (R. 1667) and an Injunction (R. 1668-9) both of which were reversed by the Court below.

Reasons for the Allowance of the Writ.

1. *Importance of the case.*—Even respondents referred below to the "unusual and transcendent issues raised by the instant case" (R. 2830).

In spite of the fact that the record showed the brewing industry was 98% organized by the Brewery Workers Union for the past 50 years (Finding of Fact 49, R. 1686) with over 300 closed-shop collective bargaining agreements and that the A. F. of L.'s referendum vote showed that the

Brewery Workers Union was the choice of 99.7% of its members (Findings of Fact 35-37, R. 1682-1683), Mr. Justice Miller's opinion validates an order which is an attempt to transfer some 15,000 beer drivers from the union of their choice to the Teamsters Union, the workers thus losing the benefit of their collective bargaining agreements and also their strike, sick, death, and out-of-work benefits in the Brewery Workers Union. In an effort, therefore, to avoid what Mr. Justice Miller calls "crystallizing" membership in unions *within* the A. F. of L. in accordance with that union's *de facto* organization of a particular industry when it *came into* the A. F. of L., and *at the present time* the Court below has held for the first time, contrary to all authorities on the nature and structure of the A. F. of L., that it has control over the "membership jurisdiction" of autonomous International Unions which compose it, and thus can dismember and destroy an International Union whenever it sees fit under the guise of a jurisdictional award or trade autonomy.

So extraordinary is the decision below that the A. F. of L. has already, in the case of the International Typographical Union, formally disavowed the holding of the Court below that the A. F. of L. has "membership jurisdiction" over affiliated International Unions (R. 2802).

Mr. Justice Miller's opinion in validating the right of the A. F. of L. to force the transfer of men from one union to another on pain of loss of their jobs and other property losses, makes the judgment below the spearhead of a Fascist State. A case more important for this Court can hardly be imagined. It affirms the existence and legality of an invisible government within a government, a government capable of forcing the transfer of men against their will from one union to another, contrary to the public policy of the Wagner Act guaranteeing them the union of their choice

and against the objectives of industrial peace of both the Wagner Act and the LaGuardia Act.

2. The numerous errors of the court below as to the nature and structure of the A. F. of L. likewise constitute, we believe, questions of sufficient importance to warrant the issuance of the Writ. Students of labor law all know that the American Federation of Labor is composed of autonomous International Unions, all completely sovereign in their own right. Now, for the first time, a court has reached the extraordinary conclusion that the A. F. of L. possesses control of the "membership jurisdiction" of the autonomous International Unions and can, in effect, shift men from one union to another thus confiscating their property rights in International and local unions. This is a matter of vast importance to the International Unions which constitute the A. F. of L. and their 4,000,000 members, and of itself furnishes ample grounds for this Court's issuance of the Writ.

3. Similarly the decision of the court below in holding the A. F. of L. has power to abrogate agreements as to jurisdiction between two autonomous International Unions is so extraordinary as to merit this Court's review. We believe that literally thousands of such agreements exist, all of which are now subject to abrogation by the A. F. of L. in order to achieve what Mr. Justice Miller calls the "large and comprehensive plan" (R. 2781) of the A. F. of L. in fostering the right of the workers to "full freedom of association, self-organization and designation of representatives" (R. 2793). This has a hollow ring when the referendum vote showed 99.7% refused to surrender membership in the Brewery Workers Union. It is safe to say that if the decision below is upheld, industrial chaos will result and prohibitive legislation destructive of the social gains achieved

by the working man in the present administration will be enacted.

4. The decision below is a patent misconstruction of the issues in the case and of the LaGuardia Act. The injunction below operates in personam against the executive officers of the A. F. of L. and the Teamsters Union. It operates at the Executive offices of the A. F. of L. at 9th and Massachusetts Avenue, N. W., Washington, D. C., and nowhere else. It is based upon the right of equity to prevent a continued breach of contract and to enjoin the promotion of such a breach. It does not pretend to enjoin the actual participants in "the allowable area of economic conflict" but simply restrains the officers of the A. F. of L. and the Teamsters Union, Messrs. Green, Tobin, et al. as they sit behind their desks. Not even their agents are mentioned (R. 1668-1669). The question involved is a breach of the terms of a contract between the Federation and the Brewery Workers Union, a union already fully organized, plus the Federation forcing the transfer against their will of 98% of all the beer drivers in this country, from the Brewery Workers to the Teamsters Union. There is no "labor dispute" unless the A. F. of L. is held to have the extraordinary power to determine for itself what union the worker must belong to for collective bargaining purposes. This was held by the court below (R. 2773) but seems such clear error as to require this Court's interposition. But, in addition, assuming a "labor dispute" was present, the court below was in error in overturning as without substantial basis a Finding of Fact of the Trial Court (Finding of Fact 66, R. 1689-1690) based on the testimony of a Chief of Detectives that the "public officers charged with the duty to protect complainants' property were unable or unwilling to furnish adequate protection" (LaGuardia Act, Section 7) and was wrong in its other rulings as to the LaGuardia Act.

5. The decision of the court below in overturning extensive Findings of Fact, resulting from a one month's trial, as to the powers of the A. F. of L., its structure, etc., is in violation of Rule 52(a) of the Rules of Civil Procedure to the effect that:

> "Findings of Fact shall not be set aside unless clearly erroneous".

and the Committee Note on the above rule to the effect that:

> "It is applicable to all classes of findings in cases tried without a jury whether the finding is of a fact concerning which there is conflict of testimony, *or of a fact deduced or inferred from uncontradicted Testimony*".

The wholesale reversal of Findings of Fact by the court below was condemned by this Court in *Federal Trade Commission* v. *Algoma Lumber Co.*, 291 U. S. 67, 73, wherein this Court, in reversing the Appellate Court said:

> "What the court did was to make its own appraisal of the testimony, picking and choosing for itself among uncertain and conflicting inferences".

WHEREFORE, petitioners pray that the petition herein be granted and the judgment below be reversed.

Respectfully submitted,

MARTIN F. O'DONOGHUE,
WILLIAM J. HUGHES, JR.,
THOMAS X. DUNN,
NICHOLAS J. CHIASCIONE,
Washington, D. C.
Attorneys for Petitioners.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 163

JOSEPH OBERGFELL, PETER BOLLENBACHER, ALBERT J. KUGLER, INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL AND SOFT DRINK WORKERS OF AMERICA, ET AL.,

Petitioners,

vs.

WILLIAM GREEN, FRANK MORRISON, JOHN COEFIELD, THE AMERICAN FEDERATION OF LABOR AND THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, STABLEMEN AND HELPERS, ET AL.

BRIEF IN SUPPORT OF PETITION FOR CERTIORARI.

I.

Appellate Court Misconceived the Issues in the Case.

The lower court states:

> "The essence of the dispute was the right of the Brewery Workers on the one hand and of the Teamsters on the other to organize particular workers for collective bargaining purposes" (Op. p. 5).

This misstates the issues of the case. The record clearly shows and the lower court found as a fact that 98% of all beer drivers are *already* organized in the Brewery Workers Union and have been for over 50 years. These men are working under 300 closed shop collective bargaining agreements which were produced in the lower court and are part of the record. There was no issue in the trial as to the right of either the Brewery Workers or the Teamsters to organize beer drivers. For 50 years they have all been organized. The real issue in the case presented the question of the authority of the Federation, under its constitution, to transfer these 15,000 beer drivers already organized and holding membership in the Brewery Workers Union to the Teamsters Union in breach of the A. F. of L.'s contract with the Brewery Workers and the Teamsters Agreement of 1915 with the Brewery Workers. The trial court found as a fact that the Brewery Workers Union's trade jurisdiction was protected by the constitution of the Federation by virtue of the provision of Section 11 of Article IX (Finding of Fact 14, R. 1674-5), and that the Federation's order of transfer would cause these 15,000 beer drivers to lose sick, death and out-of-work benefits in their local unions and that these benefits ranged from $25 to $2500 (Finding of Fact 56, R. 1688). It further found that as between the Teamsters and Brewery Workers the 1915 Agreement was valid and controlled. It was to protect these contract and property rights that the Declaratory Judgment and injunction were granted. The Court of Appeals states the issue as if the Brewery Workers and the Teamsters were contending against each other as to the right to organize the "unorganized" beer drivers in a pure jurisdictional rivalry.

This case does not involve a jurisdictional dispute as that term is popularly understood, that is, a dispute between two unions to do a certain type of work, *i. e.*, a dispute

between carpenters and machinists as to which union will erect machinery or a dispute between unions in an attempt to organize the "unorganized worker". The real issue was the transfer of the 15,000 individual beer drivers, against their will, from the Brewery Workers Union to the Teamsters by an order of the A. F. of L. This transfer confiscates their property rights in their local unions and in the international. It destroys and dismembers the international and local unions.

II.

The So-called "Decision" of the A. F. of L. Results in the Transfer of Men, Against Their Will, From One Union to Another.

Petitioners complain not merely that the "decision" of the A. F. of L. was beyond its power under its constitution but that if carried out by the A. F. of L. and the Teamsters Union it forces the transfer of men from the union of their choice to another. Counsel for respondents at the trial admitted it was an order of transfer. He admitted it again and again (R. 1544, 1568-70).

We remind the Court that both the A. F. of L. and the Teamsters did not stop with a mere declaration of rights but undertook, by every means in their power, to put the "decision" into effect and coerce a transfer of beer drivers from the union of their choice to another. The A. F. of L. and the Teamsters still want to put the so-called "decision" into effect. Thus, after the court below stayed its mandate during certiorari, respondents moved to send it down forthwith on the ground that the injunction prevented the Executive Council from "performing its duties" (R. 2831) and placed the A. F. of L. "under drastic and unwarranted restrictions" (R. 2831). If the decision was simply a declaration of jurisdiction, what "duties" were there

to perform? As the injunction simply restrained the A. F. of L. and the Teamsters from carrying out the "decision" of the A. F. of L., what respondents obviously wanted was to be able to carry out and enforce the decision, i. e., force "compliance", in the words of William Green, President of the A. F. of L. (R. 1683, Findings of Fact 38 and 39). Hughes, Secretary-Treasurer of the Teamsters Union, a respondent herein, was more frank about it. In a public speech on the floor of the Teamsters Convention, October 12, 1939, within a week after the injunction was granted, he said:

> "I am going right along regardless of your court and regardless of your injunction, and I am going to get these brewery drivers" (R. 2693).

In the Reply filed below (R. 2830) respondents admit that the result of non-compliance will be expulsion from the A. F. of L. They disclaim, however, being responsible for such an expulsion.

We have already referred to Findings of Fact 38 and 39 (R. 1683), undisturbed by the court below, to the effect that immediately after the "decision" in 1933, Green, as president of the A. F. of L. notified all affiliated State Federations of Labor and all Central Labor Bodies and all national and international unions and Federal and local labor unions affiliated directly with the A. F. of L. of the "decision" of the convention "in awarding jurisdiction of the beer drivers to the Teamsters Union, transferring beer drivers to the Teamsters Union", and advised these unions "to see to it that the decision of the A. F. of L. was complied with and carried out." Green and the Federation went further. The trial court held:

> "Finding of Fact 39. The Federation further advised state federations of labor and central labor bodies to suspend and expel all local brewery workers unions

affiliated with state federations of labor and central labor bodies, if said local brewery workers' unions did not comply with the decision of the Executive Council and the Convention of 1933 in awarding jurisdiction of the beer drivers to the Teamsters Union and transferring beer drivers to the Teamsters Union" (R. 1683).

"Finding of Fact 40. The said Federation, by letters written by William Green as President of said Federation, advised brewery owners who employed beer drivers who held membership in the Brewery Workers Union that in order to comply with the decision of the American Federation of Labor they should deal exclusively with the Teamsters' Union and not to enter into collective bargaining agreements with the Brewery Workers' Union but only to enter into collective bargaining agreements with the Teamsters' Union" (R. 1683-1684).

We have already seen that Tobin, president of the Teamsters Union, likewise put the "decision" into effect. (Petition herein, p. 11.)

Beck, the Teamsters' organizer in eleven Western States, who was charged with securing compliance with the A. F. of L.'s "decision" stated on the witness stand:

"I was simply acting on instructions of the General President to organize beer drivers" (R. 1390).

The General President was Tobin, President of the Teamsters, and Tobin's orders, according to Beck, were the result of the "decision" (R. 1381, 1390).

An analysis of Beck's testimony, too long to be quoted here, shows that Beck considered that he was not only carrying out the orders of the Teamsters Union but also those of the A. F. of L. (R. 1380-1420).

The court below found that these coercive acts were continuing and would be committed unless restrained (Find-

ing of Fact 61, R. 1689; Conclusion of Law 19, R. 1692). Neither the A. F. of L., the Teamsters Union, or Green or Tobin have ever withdrawn their notifications to national and international unions, state and central labor bodies, Federal unions and locals, etc., that the "decision" must be observed.

Lastly, *since* the judgment below, Green, as president, has notified the Brewery Workers Union that unless it submits to the "decision" it will be suspended (R. 2824). In the face of the above, we ask how can it be contended that the decision of the A. F. of L., as interpreted by Green, president of the A. F. of L., and Tobin, president of the Teamsters Union, and as enforced by them, is anything other than an outright order of transfer of the beer drivers from the union of their choice to the Teamsters Union?

Finding of Fact 36 to the effect that 99.7% of the membership were in favor of remaining in the Brewery Workers Union (R. 1682) has not been disturbed by the court below. No testimony was submitted by the A. F. of L. or the Teamsters that the number of brewery workers desiring to remain in the Brewery Workers Union was any lesser percentage. This Court, therefore, must face fairly the fact that the decision below thwarts the desires of 99.7% of the Brewery Workers to have the Brewery Workers Union as representatives of their own choosing in labor matters.

III.

Nature and Structure of the A. F. of L.

The A. F. of L. is composed of the following types of organizations:

(1) Local trade and Federal labor unions.

(2) Local central bodies.

(3) State federations of labor.

(4) Departments.

(5) National and international unions.

Over these five bodies the powers of the A. F. of L. vary. Local trade and Federal labor unions, central labor bodies, State federations of labor and departments are chartered directly by the A. F. of L. and are directly subordinate to the A. F. of L. Over these bodies the A. F. of L. possesses extensive membership powers. As to national and international unions, mere certificates of affiliation are issued by the A. F. of L. since national and international unions are autonomous, self-governing, independent entities and the Federation has no membership control over them whatever. A recent study of the nature and structure of the A. F. of L. is set forth in the International Juridical Association *Bulletin* of August 1936, Vol. 5, No. 2 in confirmance of the above.

The trial court in Finding of Fact 3 (R. 1672) held that at the time of its affiliation with the A. F. of L. in 1887 the Brewery Workers had organized the brewery industry and thus had an established trade jurisdiction under the A. F. of L. as against any other union over all brewery workers, including beer drivers. It also found that the Teamsters Union did not, at the time of its organization, include in its membership beer drivers. (Finding of Fact 6, R. 1672.) Likewise the trial court found as a fact that when an international union became affiliated with the A. F. of L., the constitution of the A. F. of L. guaranteed two specific things: First, jurisdiction over all workmen doing the work of the specific craft or *occupation* covered by the organization; secondly, complete autonomy to the international over all of its internal affairs, and further, that no right of any kind would be sacrificed or lost by a

national or international union in joining the said Federation (Finding of Fact 8, R. 1673).

The suggested role of the Federation (by the court below) as a dominant, all-powerful body is repudiated by a number of events that occurred in the early days of the Federation. Thus as far back as 1894 President Samuel Gompers of the A. F. of L. stated in "The American Federationist", the monthly magazine of the A. F. of L.:

> "In becoming affiliated with the A. F. of L. there is no loss of any right that members or unions surrender. Their autonomy and independence are guaranteed and maintained. * * * We assure all that the Federation is comprised of too sincere unionists either to encourage or allow any infringement of trade rights" (R. 1466).

President Gompers in 1908 undertook to answer the specific question herein as to what authority the A. F. of L. exercised over an affiliated international union by stating:

> "The A. F. of L. guarantees to each affiliated organization absolute autonomy and independence in the conduct of its own affairs * * * Each affiliated organization is sovereign unto itself and its trade and internal affairs * * *. Each national or international union is protected in its particular field against rivals and seceders and yet without a loss of any right which any national or international union inherently had *prior to the affiliation* to the A. F. of L" (R. 818-819). (Italics ours.)

When Mr. Gompers testified in *Gompers* v. *Buck Stove & Range Co.*, 33 App. D. C. 516, he stated under oath that:

> "No national or international union is subordinate to the A. F. of L. They are sovereign entities in themselves" (R. 1257).

In the 1935 Convention of the A. F. of L. when the question arose of organizing the mass production industries

into large industrial unions and issue certificates of affiliation to them, the Convention refused to do so because it might violate the prior contracts of affiliation of international unions already affiliated. The Convention decided:

> "The convention could not have done otherwise than reaffirm the rights and jurisdiction given to the national and international unions which had been chartered by the American Federation of Labor, many of which had become international unions before the Civil War and had maintained a continuous existence since that time. It was principally these great international unions which had brought the American Federation of Labor into existence. When the American Federation of Labor was organized, and as unions accepted charters, and when national or international unions have been organized since 1881, a *contract* was entered into between the American Federation of Labor and the national or international unions. This contract called for loyalty to the purposes and policies of the American Federation of Labor. In return the national and international unions were guaranteed two specific things, first, jurisdiction over all workmen doing the work of the specific craft or *occupation* covered by the organization, second, guaranteeing to national and international unions complete autonomy over all its internal affairs. The American Federation of Labor could not have been organized on any other basis between the national and international unions and the Federation itself recognized that where a *contract* is entered into between parties it cannot be set aside or altered by one party without the consent and approval of the other" (R. 853-55). (Italics ours.)

President Gompers said on this subject:

> "The American Federation of Labor has made it the cardinal principle to declare, maintain and secure the autonomy of every trade *and labor* union in the exercise of their right to regulate the matters connected with their respective trades and the transaction of their

> business uninterfered with by any 'supreme', 'grand', 'mysterious' power." (Reed, "Labor Philosophy of Samuel Gompers", p. 143) (Italics ours).

Up until the decision of the court below no one has suggested that the A. F. of L. has power to control the membership of its affiliated international unions. Thus Groat in "Organized Labor in America" states:

> "When internationals claim jurisdiction against each other there is no control authority (in the Federation) to act as peacemaker" (p. 426).

Professor Jaffe likewise states:

> "The Constitution of the Federation does not specifically provide any machinery for settling jurisdictional disputes." (Yale Law Journal, 1940, p. 432.)

The concept of the court below that the A. F. of L. is a vast reservoir of power is repudiated by President William Green, himself, who publicly stated that the relationship of an affiliated international to the A. F. of L. "is like that of the States to the Federal government." The court below calls Green's conception "far-fetched" (R. 2780). President Green went on to say that the A. F. of L. has "no power of compulsion" over these unions (Washington Post, March 27, 1940).

As far back as 1902 the Convention of the A. F. of L. disclaimed entirely any power to settle even so-called jurisdictional disputes (we contend the present is not such a dispute). The Executive Council there said:

> "The A. F. of L. has only limited power in the settlement of these disputes. It claims no authority to interfere and any action which it takes is voluntary. The Executive Council, however, has, during the past year, repeatedly offered its services to unions engaged in controversies of this nature, and has in every case en-

deavored to bring about an amicable arrangement and a satisfactory settlement of these difficulties" (R. 518).

In 1905 the Convention of the A. F. of L. reiterated the principle that the role of the A. F. of L. was that of mediator, and that it would not even undertake the work of mediator unless the unions involved would agree in advance in writing to abide by the decision rendered (R. 1631). In contrast to the unhappy "implied power" theory of the court below, Samuel Gompers, in a full statement on the matter before the A. F. of L. Convention in 1907 stated:

> "We must bear in mind that in the last analysis we dare not depart from the true conception of the fact that to the international trade unions belongs all power not specifically delegated to our Convention" (R. 1682-1683).

In contrast to this is the statement of Justice Miller below that the Brewery Workers Union, when it joined the A. F. of L., "reserved no rights or powers affecting its jurisdiction over membership or limiting the power over that subject *except to the extent* that they are set forth in the constitution and the charter" (R. 2779) (Italics ours).

President Gompers, in his 1907 statement, specifically disavowed any such implied power in the A. F. of L. to settle jurisdictional disputes, from which it is obvious it had no power to make an outright transfer of men. He held that the A. F. of L. could only have this power by an *express* amendment to the constitution, and said that even then such an amendment should not be adopted unless not only the delegates at a Convention of the A. F. of L. but "the rank and file of the men who labor in their local unions" had voted upon it. He proposed the very question to be presented to them:

> "Shall the A. F. of L. undertake to decide finally questions of jurisdiction between organizations and en-

force the same, even to the extent of the revocation of a charter held by an international union (should it fail to abide by a decision rendered) and the reorganization of such an international union" (R. 1082-1085).

President William Green, likewise, in the hearings before the Committee on Labor, House of Representatives, 76th Congress, Volume 6, page 1801, wrote Mr. August Busch, President of Anheuser-Busch, Inc., with respect to the jurisdictional dispute which came before this Court in *U. S.* v. *Hutcheson,* No. 43, decided February 3, 1941, — U. S. —, as follows:

"Washington, D, C.,
June 27, 1939.

"August A. Busch, Jr.
Anheuser-Busch, Inc.:

"I have exhausted all efforts at my command to bring about a settlement of the controversy between machinists and carpenters organizations employed at your plant. I have urged a settlement of the controversy by the representatives of the two organizations involved. I regret that I lack authority to do more. I am willing, however, to render any service that lies within my power.

WILLIAM GREEN."

Mr. Adolphus Busch concluded his testimony by stating:

"It is clear from President Green's telegram that the A. F. of L. has no power to settle a jurisdictional dispute between two of its affiliated unions. A record of the controversy, published by the American Federation of Labor in 1934, makes it doubly clear that this central trades organization cannot, within its own powers, settle such controversies, or influence the parties to the dispute to settle them."

No exception has ever been taken to this statement by the A. F. of L. In fact, we go so far as to say that it is assumed

by this Court to be the truth and can be the only ultimate basis for this Court's decision in *U. S.* v. *Hutcheson, supra.*

IV.

Recent Declaration of Powers by the A. F. of L. in I. T. U. Case Directly Contrary to Decision Below.

We submit with deference that the court's decision is contrary to everyone's concept of the powers of the A. F. of L., and is in direct contradiction to what the Executive Council of the A. F. of L. construed its own powers to be in February, 1941 (R. 2802). It is well known that the International Typographical Union dropped out of the A. F. of L. in 1937 and that efforts on the part of both sides have been made since to secure its re-entry. The I. T. U. has consistently refused to reenter the A. F. of L. unless it received beforehand a disclaimer by the A. F. of L. of the precise powers which the court below holds the A. F. of L. has. The following statement [3] by a subcommittee of the Executive Council of the A. F. of L., ratified by the Executive Council itself, constitutes a recent construction of the powers of the A. F. of L. under its constitution, a construction which is newly discovered evidence of the most vital sort and which only came to attention of counsel subsequent to the lower court's decision.

"February 21, 1941.

Proposal of A. F. of L. Committee:

"To remove any misunderstanding or apprehension and to make clear and definite agreed upon interpretations and constructions of the constitutional provisions and laws of the A. F. of L. relating to the 'autonomy' of National and International Unions, to determine their jurisdiction, to be secure in their right to enact laws for the government of their members and

[3] The Typographical Journal, March, 1941, p. 306.

to the control of their funds and properties, the special committee of the A. F. of L. is prepared to recommend that the Executive Council, through its President, advise the I. T. U., its officers and members, as follows:

"1. That Section 2 of Article 2 of the American Federation of Labor guarantees complete autonomy to all National and International Unions, including the I. T. U., that the A. F. of L. is a 'Federation of National and International Unions' each and all of them self-governing; that the A. F. of L. is without authority to interfere with the internal affairs of such national and international unions or the government of its members and local unions; that the A. F. of L. has in no way any power, authority, control, equity or property right, direct or indirect, in the funds or properties of such national and international unions.

"2. That the Federation has never attempted arbitrarily to define the jurisdiction of national and international unions. Such is not the policy of the Federation. Its laws fully recognize the complete autonomy of national and international unions in this regard. On the other hand, the Federation does attempt to safeguard the jurisdictional rights of affiliated national and international unions and endeavors to bring about adjustments wherever conflict develops between national and international unions; that where the laws of the Federation to deal with the jurisdiction and government of unions and authorizes the Federation specifically to deal with such matters, they relate to directly chartered bodies, that is Federal trade and labor unions, City and State Federations of Labor.

"National and international unions are affiliated with the Federation by 'Certificate of Affiliation'. All other affiliated unions are 'chartered' by the Federation and are subordinate to the regulation and control of the Federation. While in the past, the terms 'Certificate of Affiliation' and 'Charter' have at times been used indiscriminately and synonymously, such use has been inadvertent and without authority and therefore

without binding influence.[4] It is intended that hereafter these terms shall be correctly used and properly applied.

"Under our laws, affiliated national and international unions have complete authority to regulate the conduct of their officers and members and to control and use of their funds and properties. The Federation has only authority to supervise, regulate and control the affairs, funds and properties of directly chartered local trade and Federal labor unions, city and state federations of labor" (R. 2802).

V.

Section 11 of Article IX of the Federation's Constitution Protects the Established Trade Jurisdiction of the Brewery Workers Union.

The trial court entered as part of the Declaratory Judgment the following:

"4. That under Section 11 of Article IX of the A. F. of L.'s constitution, the established trade jurisdiction of the Brewery Workers Union is further guaranteed and protected, and the defendant, the American Federation of Labor, is required, under its said constitution, to observe and protect the said trade jurisdiction of the Brewery Workers Union, more particularly its prior and exclusive right to organize beer drivers as against the claim of the Teamsters or any other organization to organize beer drivers" (R. 2690; see also Finding of Fact 14, R. 1674-5).

Justice Miller in the opinion below reversed this holding and held that there was no guarantee to protect an established trade jurisdiction of any affiliated national or inter-

---

[4] Thus repudiating entirely the argument of the court below based on the word "charter" as distinguished from "Certificate of Affiliation". No more outright disavowal of the decision below could be found.

national union (R. 2781). Section 11 of Article IX provides:

> "No charter shall be granted by the A. F. of L. to any national or international union without a positive and clear definition of the trade jurisdiction claimed by the applicant, and the charter shall not be granted if the jurisdiction claimed is a trespass on the jurisdiction of existing affiliated unions, without the written consent of such union" (R. 492).

In seeking the meaning of a particular provision of a constitution it must be examined in the light of its origin, and the evils it was intended to remedy. Thus the facts leading up to the adoption of Section 11, Article IX were produced before the trial court (R. 492) but ignored by the appellate court (R. 2781). The Teamsters Union was admitted to the Federation in 1899. Immediately at the next A. F. of L. convention the Teamsters Union made claim by Resolution 16 that beer drivers be transferred to the Teamsters Union under the theory that a man should belong to the union of his trade (R. 492). At the same convention the Federation was confronted by Resolution 77 offered by the International Union of Machinists which demanded the immediate transfer of linotype operators from the International Typographical Union to the International Association of Machinists (R. 495), and that the Federation "declare once and for all whether it stands for trade autonomy or not" (R. 495). To the same effect was Resolution 125 asking for the transfer of the blacksmiths and firemen from the United Mine Workers to the Blacksmiths and Firemen's Union (R. 495). These three important resolutions immediately posed before the Federation in the year 1900 the question as to whether or not these three unions should be compelled to transfer certain portions of their membership to the other unions in adherence to a theory of strict trade autonomy. The three resolutions were referred to the

Grievance Committee and that committee reported to the Federation as follows:

"At each succeeding convention of the A. F. of L. we find that of the grievances presented for adjudication the great portion of them involve questions of jurisdiction which arise between bodies very often both being chartered by this body. These disputes become of a more aggravated character when it is demonstrated to your committee that each party has apparently been accorded jurisdiction over the field immediately in dispute by the A. F. of L. charter. *Particularly is this the case when the dispute involves one of what we may term the composite charters granted by the A. F. of L.*, and often, as a result, we find ourselves confronted with the undesirable task of limiting on the one hand what is popularly regarded as trade autonomy, or, on the other, of designating a composite organization, which, while in existence, has demonstrated its ability both to protect and advance the interests of its members to a remarkable degree. **In such cases we are strongly of the opinion that narrow conceptions of strict trade autonomy should give way to the policy, which, in our judgment, will best serve the interests of the workers immediately involved and best promote the power of the general movement. We desire further to say that this body cannot, in our opinion, presume by resolution or otherwise, to transfer bodies of men from one organization to another unless with their consent.**

* * * * * * *

"In line with these opinions we beg to submit the following recommendations with the hope that they will be concurred in and that they will be referred to the committee on laws with instructions to engraft their substance in the constitution of the A. F. of L.:

"First, that hereafter when granting a charter to organizations of a particular craft or calling, jurisdiction over which in whole or in part, has been granted by the terms of a charter already issued to another organization, the limits of the new jurisdiction shall, as

> far as practical, be defined by the Executive Council after consultation with the organization having the prior claim, and if such limitation be unsatisfactory to the new applicant no charter of the A. F. of L. shall be granted. In all cases, whether of the acceptance of limitations by the younger organization or the relinquishment of jurisdiction by the other, the same shall be secured, specifically stated in writing, from the proper officers of the interested bodies, and preserved for the future guidance of this Convention" (R. 497).

The above, embodied in Finding of Fact 14 (R. 1674) destroys the argument of the Court below.

The Committee's report was concurred in (R. 499) and the Committee on Laws adopted the Committee's report and wrote Section 11 of Article IX into the Federation's constitution as above set forth (R. 500).

Again, the established trade jurisdiction of an international union is further protected by Section 2 of Article XVII limiting the power of the Federation in issuing charters to Federal local labor unions so as to prevent a trespass on the Internationals' prior trade jurisdiction (R. 2186).

Section 11 of Article IX further explains the significance of references in the constitution to *labor* unions, which are not strict craft unions, as this Court knows. In the preamble of the constitution of the A. F. of L. it is expressly provided that:

> "We, therefore declare ourselves in favor of the formation of a real federation embracing *every* trade and *labor* organization in America organized under the trade union system."

Article I of this constitution provides:

> "This Federation shall be known as the American Federation of Labor and shall consist of such trade *and labor* unions as shall conform to its rules and regulations."

Article II, entitled "The Objects" says (R. 499):

> "Section 1. The objects of this Federation shall be the encouragement and formation of local trade and *labor* unions."

The recognition of "labor", as well as craft unions was made clear at the Second Convention of the American Federation of Labor held in 1887. An amendment was made to the Federation's constitution so as to include in the first Article, entitled "The Name" and in the second Article, entitled "The Objects", "*labor* unions as well as trade unions."

The record, page 486, of the second convention of the A. F. of L. held in 1887, shows as follows:

> "The convention then proceeded to the consideration of the report. The Preamble was first read. Mr. Block offered an amendment to the third clause of the Preamble: 'We therefore recognize the necessity of the existence of a thorough Federation.' Mr. Wilkinson offered an amendment to add at the end of the third clause: 'organized under the trade union system of organization.' Mr. Burtt offered a substitute to strike out in the first line of the second clause of the Preamble the words 'and labor' and to strike out all words after the word 'trade' in the last or third clause of the Preamble: *so as to have none but trade unions connected with the Federation.* After a very long and interesting debate a motion was made to close the debate. The convention then proceeded to vote on all the motions in their regular order. *Mr. Burtt's substitute was lost. Mr. Wilkinson's amendment was then adopted.* The question recurred on Mr. Block's original amendment. Mr. Block's amendment was lost. *The Preamble as amended by Mr. Wilkinson was then read and adopted.*"

This amendment to the Federation's Constitution was made so as to bring within the Federation labor unions such as industrial organizations as well as strictly craft unions.

Justice Miller's opinion makes no mention whatever of any of the above, but continually exalts the autonomy of the strict trade union at the expense of the autonomy of the composite "labor" unions which formed the Federation.

The amazing feature of the opinion below is that it reached its conclusion (a) on the basis of four fragmentary excerpts from the 1886 Constitution and from the term "charter" later rejected in favor of "certificate of affiliation" yet (b) after ignoring the significance of Section 11 of Article IX, it invokes that very Section as protecting the trade jurisdiction of the Teamsters (see opinion, R. 2790). If Section 11 of Article IX did not protect the Brewery Workers prior established trade jurisdiction when it was affiliated with the Federation against the Teamsters claim, why would it then protect the Teamsters' jurisdiction when the Brewery Workers having been illegally expelled (Conclusion of Law 8, R. 1691) later returned to the Federation in 1907.

Finally the court below gives no explanation whatever of the fact that pursuant to Section 11 of Article IX of the 1900 Convention prohibiting issuance of charters where to do so would trespass on the jurisdiction of existing affiliated unions, Resolution 220 of the 1900 Convention required the President of the A. F. of L., Samuel Gompers, to write to all international unions asking them, in view of the disputes as to jurisdiction between them, to file with the Federation a written declaration defining their claims of jurisdiction in order that this might be used as a guide in the issuance of future charters (R. 1886). In answer to this letter the Brewery Workers Union claimed jurisdiction over all brewery workers, specifically including beer drivers (R. 1887-1888). The Teamsters Union, in answer, referred to the 1900 decision of the Grievance Committee, approved by the Convention, to the effect that the A. F. of L. had no power

to transfer bodies of men from one union to another in the following language:

> "A recent decision of the A. F. of L. gives the United Brewery Workers jurisdiction over men engaged in driving beer wagons." (Plaintiff's Exhibit 32, R. 1886-1887).

The A. F. of L. did no such thing, its "recent decision" being simply the decision of the Grievance Committee above referred to (Present brief p. 35) that the A. F. of L. had no power "by resolution or otherwise to *transfer bodies of men* from one union to another."

VI.

Gross Errors in the Opinion of the Court Below.

The opinion below shows the wisdom of Rule 52(a) of the Rules of Civil Procedure prohibiting an Appellate Court setting aside Findings of Fact unless clearly erroneous. The basis of this rule is the impossibility, in the nature of things, of an appellate court acquiring from a printed record as accurate a knowledge of the facts as a trial court which has listened to them gradually unfold over a month's trial. It was inevitable, therefore, that the court below, "picking and choosing as it did among uncertain and conflicting inferences" (*Federal Trade Commission* v. *Algoma Lumber Co.*, 291 U. S. 67, 73) should fall into serious errors.

The Court below in order to sustain the validity of the order of transfer of 1933 by the Federation cited five sections from the 1886 Constitution, not the 1933 Constitution (R. 2780-1). The order of transfer was promulgated in 1933. Therefore, the validity of this order of transfer by the Federation was to be measured by the terms of the 1933 Constitution. The *trial* Court rightly used the clarified and amended 1933 Constitution as its guide in measuring the

power of the Federation, and in its declaratory judgment found that Sec. 11 of Article IX prohibited the Federation from entering the order (R. 1674-5).

The *Appellate* Court entirely ignored the 1933 Constitution and did not even refer to it. An analysis of the five sections of the 1886 Constitution upon which the court below relied will show that four of these sections have been clarified by amendments. Thus:

1886 Constitution.	*1933 Constitution.*
Art. I, Sec. 1: "This association shall consist of such Trades and Labor Unions as shall conform to its rules and regulations" (R. 479).	Art. I, Sec. 1: SAME (R. 2170).
Art. VIII, Sec. 1: "In all questions not covered by this constitution, the Executive Council shall have power to make rules to govern the same, and shall report accordingly to the Federation" (R. 482).	Now known as Art. IX, Sec. 8: "The Executive Council shall have power to make the rules to govern matters not in conflict with this constitution, or the constitution of affiliated unions, and shall report accordingly to the Federation" (R. 2178).
Art. VIII, Sec. 2: "Charters for the Federation shall be granted by the President of the Federation, by and with the consent of the Executive Council, to all National and International and Local bodies affiliated with this Federation" (R. 483).	Now known as Art. XIV, Sec. 1: "Certificates of affiliation shall be granted by the President of the Federation, by and with the consent of the Executive Council, to all National and International Unions and local bodies affiliated with this Federation" (R. 2186).
Art. VI, Sec. 3: "While we recognize the right of each trade to manage its own af-	Now known as Art. IX, Sec. 5: "While we recognize the right of each trade to man-

fairs, it shall be the duty of the Executive Council to secure the unification of all labor organizations'' so far as to assist each other in any justifiable boycott, and with voluntary financial help in the event of a strike or lockout when duly approved by the Executive Council.	age its own affairs, it shall be the duty of the Executive Council to secure the unification of all labor organizations, so far as to assist each other in any trade dispute'' (R. 2178).
Art. VIII, Sec. 3: ''Any seven wage workers of good character, and favorable to Trades Unions, and not members of any body affiliated with this Federation, shall have the power to form a local body, to be known as a 'Federal Labor Union', and they shall hold regular meetings for the purpose of strengthening and advancing the Trades Union movement, and shall have the power to make their own rules in conformity with this Constitution, and shall be granted a local charter by the President of this Federation, provided the request for a charter be endorsed by the nearest local or National Trades Union officials connected with this Federation'' (R. 483).	Now known as Art. XIV, Sec. 2: ''The Executive Council is authorized and empowered to charter *Local Trade Unions* and *Federal Labor Unions*, to determine their respective jurisdictions not in conflict with National and International Unions, to determine the minimum number of members required, qualifications for membership and to make rules and regulations relating to their conduct, activities and affairs from time to time as in its judgment is warranted or deemed advisable'' (R. 2186).

We discuss these sections as follows:

Article VIII, Section 1.—The court cites Article VIII, Section 1, *supra*, of the 1886 Constitution as a broad grant

of power to the Executive Council of the Federation, yet in 1933 when the order of transfer was passed Article VIII, Section 1 had been amended and was known as Article IX, Section 8 wherein the Executive Council's power was expressly limited so as to not make any rule "in conflict with the Federation's Constitution" or "the constitution of affiliated unions." The trial court found that this order of transfer violated Section 11, Article IX.

Article VIII, Section 2.—The court below ignored vital evidence in the record (R. 1939 *et seq.*) wherein the Federation at its Second Convention in 1887 revised its Constitution whereby Article VIII, Section 2 was changed, so that the Federation thereafter would not issue charters to National or International Unions, but would issue "Certificates of Affiliation". The International Typographical Union's delegates to the Second Convention of the Federation were instructed to bring about this change, so that it would expressly appear that the Federation had no dominion or control over the membership or property of National or International Unions, but rather that the unions were merely allied or federated together for the general benefit of the labor movement by a "Certificate of Affiliation". For the full history of the reasons of this very significant change, see Finding of Fact 11, R. 1673-1674, 487, 1979-91.

Article VI, Section 3.—The court below to further substantiate the power of the Federation to control the membership of National or International Unions cited Article VI, Section 3 (R. 2781) but failed to cite the entire section which flatly contradicts the inferences attempted to be deducted by the court. The court cites the section as if the Federation had been granted the power to unify and amalgamate unions. The sections cited above show that the Federation was merely given the power to attempt to unify all labor unions in a "justifiable boycott or in a trade

dispute". Article VI, Section 3 has been changed to Article XIV, Section 5 of the 1933 Constitution, *supra*, and this clearly explains the meaning of the section, namely, to attempt to unify all affiliated unions in a trade dispute with an employer.

Article VIII, Section 3.—Probably the most palpable error committed by the court is the citation of Article VIII, Section 3 of the 1886 Constitution, *supra*. In its opinion (R. 2781-82) the court cites this section to show that the Federation did not intend to protect the trade jurisdiction of National and International Unions and quotes this section as evidence of a broad grant of power to control the membership of National or International Unions. The court reasons that by reason of Article VIII, Section 3 of the 1886 Constitution the Federation could organize local trade unions and with their new organization they could trespass and violate the trade jurisdiction of National and International Unions, thus preaching "dual unionism" which is heresy in the modern labor movement. This view is refuted by Article XIV, Section 2 of the 1933 Constitution (formerly known as Section 3 of Article VIII), which in express language prohibits the Federation from issuing a charter to "Local Trade Unions and Federal Labor Unions and to determine their respective jurisdiction not in conflict with National and International Unions". In other words just as in Section 11 of Article IX which prohibits the issuance of new Certificates of Affiliation to incoming National and International Unions if it is a trespass on the trade jurisdiction of a prior affiliated union, so likewise in Section 2 of Article XIV the Federation cannot issue a charter to a Federal Local Labor or Trade Union if it is in conflict or violates the jurisdiction of an affiliated National or International Union. Further, the court ignored the proviso even in Section 3 of Article VIII

which provided that the request for a charter must be endorsed by the nearest local or national trade union official connected with the Federation, so that even in the 1886 Constitution before a new local federal trade union could be admitted it must have the endorsement of a national trade union. Article XIV, Section 2 of the 1933 Constitution, *supra*, expressly grants the power to the Federation to control the membership of federal local or trade unions. There is no such constitutional provision giving the Federation the power to control the membership over *national* or *international* unions. Mr. Morrison, the Secretary of the A. F. of L., explained that the reason why they left out national and international unions was because they were autonomous and self-governing (R. 1259).

Frank Morrison, Secretary of the Federation for over 50 years, testified that the *same identical* Certificate of Affiliation as given to the Brewery Workers is issued to federal labor unions, national and international unions, central labor bodies, state federations of labor and departments (R. 1259). There is no argument therefore in the Certificate of Affiliation standing alone. The difference in power that the Federation has over these various bodies is found in the provisions of the *Constitution* of the Federation (R. 1259) and has already been discussed. (Present brief, p. 25.)

The support the court found in the language of the Certificate of Affiliation Mr. Morrison explained away. For instance, the Certificate of Affiliation provides

> "should the International Union of United Brewery Workers be dissolved, suspended, or forfeit their Certificate of Affiliation then the person to whom this Certificate of Affiliation is granted or their successors, bind themselves to surrender the same with such other property as shall properly belong to this Federation."

Mr. Morrison testified that this particular proviso does not apply to national or international unions for the reason that national or international unions are autonomous and it only applies to federal labor unions by virtue of Article XVII, Section 13 (R. 1245). If the Federation has no control over the property of a national or international union and if the Certificate of Affiliation does not properly express the true meaning of the relationship over its property *a fortiori* the Certificate of Affiliation alone cannot be used as a valid and measuring guide for determining the power of the Federation over the membership of the national or international union.

VII.

The Importance of the International Working Agreement of 1915.

The court below was confronted with the 1915 Working Agreement under which the two unions adjusted their differences, the Teamsters Union conceding that "drivers, *chauffeurs* or stablemen" in the brewing industry came under the jurisdiction of the Brewery Workers Union. (This Court is asked to note the word "*chauffeurs*" thus destroying Justice Miller's "technological argument". See Opinion below, R. 2795.) In turn the Brewery Workers conceded that "drivers, *chauffeurs* and stablemen in the soft drink industry should come under the jurisdiction of the Teamsters. There were also other provisions in the Agreement. The court below criticized the Agreement, questioning whether it was "a mere working agreement without binding contractual character or on the other hand, had contractual binding effect." The court likewise criticized it because it had no expiration date stating that "considerations, both of the subject matter and of parties" were persuasive that the contract was not intended to be

permanent and so it was terminable by one of the parties.

In any event the court below held that the Agreement could not have a "binding, contractual character" as against the power of the A. F. of L. "to make a determination contrary to that reached in the agreement". This is a further statement by the court below of the complete supremacy of the A. F. of L. which makes a mockery of the autonomous (?) rights of the various international unions. This, too, in spite of the fact that the constitution of the A. F. of L. expressly contemplates that differences between internationals should be settled by agreement (Article III, Section 12 (R. 1707)). That section provides that the Convention will not even consider a grievance unless the parties have "previously held a conference and attempted to adjust the same themselves" (R. 1707). There are literally thousands of such agreements made between international unions and no one has even suggested that they must have the approval of the A. F. of L. The impossibility of the A. F. of L. supervising the thousands of agreements made each year between 140 internationals operating in 48 States is apparent. If these agreements are all subject to nullification by the A. F. of L. it follows that they are no agreements at all and hence the unions might as well not make them. Thus the court below saddles the A. F. of L. with policing the jurisdiction of 140 internationals. If the A. F. of L. took the decision below seriously it would naturally mean the disintegration of the A. F. of L. as a result of the immense burden of these tyrannical powers plus the resultant dissension. In contrast to the decision below, Frank Morrison, Secretary of the A. F. of L., stated that the A. F. of L. had nothing to do with these international working agreements (R. 1266-67).

The 1915 Working Agreement is still being observed by the Brewery Workers Union in its entirety and is being observed in all respects by the Teamsters Union except as

to the paragraph dealing with beer drivers. Confronted with the fact that the Agreement is being lived up to at the present time it is impossible to understand how the court below could hold the agreement, impliedly valid in all other respects, is invalid in the single solitary provision conceding jurisdiction of beer drivers to the Brewery Workers Union.

But in addition the court below has failed entirely to grasp the significance of the Agreement with respect to the 1933 decision of the Convention. After all, the Convention was supposed to have heard the dispute upon the facts and one of the salient facts was certainly the existence of the 1915 Agreement. The trial court, in Finding of Fact 33, left undisturbed by the court below and not even mentioned in its opinion, holds as a fact that the decision of the Executive Council

> "was arrived at not upon a full statement of the Brewery Workers Union's case, but upon a false statement of facts resulting from the denials by the said Tobin of the existence of the said International Working Agreement" (Finding of Fact 33, R. 1681-82.)

Likewise Finding of Fact 34 (R. 1682), undisturbed by the court below found that at the 1933 Convention Tobin requested the ratification of the decision of the Executive Council and again denied the existence of the International Working Agreement.[5] The trial court in its memorandum opinion deciding the case reiterated these two Findings of Fact (R. 1665). The Court there said "if the President of the Teamsters Union had admitted the 1915 agreement, the resolution passed by the 1933 Convention of the American Federation of Labor would probably have never been

---

[5] The Agreement was actually ratified by the Teamsters Convention at Tobin's request (R. 477-478).

adopted and this litigation would, therefore, have been avoided" (R. 1665).

The importance of this is that the 1933 Executive Council and Convention made the "jurisdictional decision" not upon the theory of the court below that the Federation could redistribute jurisdiction *de novo* but upon the theory that historically and as a matter of right jurisdiction belongs to the Teamsters. In arriving at this conclusion the 1915 Working Agreement was obviously highly important evidence for the consideration of the delegates and many delegates admitted afterward that they would have voted differently if they had known Tobin's statement was untrue (R. 1575). Whatever the court below may say as to the right of the Federation to ignore the 1915 Working Agreement, it can hardly be deemed to have considered and disposed of it when, according to the undisputed Findings of Fact above cited, one of the parties denied its very existence. Since then Tobin has admitted in an affidavit filed in the trial court the existence of this Agreement (R. 40). Thus the Executive Council and the Convention acted on a false statement of facts.

VIII.

No "Labor Dispute" Being Involved the LaGuardia Act Does Not Apply.

The present suit sounds in contract and prays for a *mandatory injunction*, in the nature of a decree of specific performance, i.e., to require the A. F. of L. to live up to its contract of affiliation with the Brewery Workers Union and the Teamsters Union to live up to the International Working Agreement of 1915. The case is somewhat similar to *LaRoe* v. *Possehl*, 156 Misc. 476, wherein under the New York State Anti-Injunction Act the court held no "labor dispute" was involved where an individual member sued

to enjoin an unjust expulsion from a union in violation of his contract right.

The injunction herein does not enjoin Teamsters locals or Teamster members from unlawful conduct in Portland, Tacoma, San Francisco or elsewhere. Obviously the injunction could have no extra-territorial effect. The evidence of violence in these various places was not submitted for the purpose of obtaining an injunction restraining this violence but to show the *effect* of the illegal order, the loss of property rights, and that the order was not a mere decision but that, as carried out, it amounted to a coercive transfer of workers.

The situs, therefore, of the present "case" or "controversy" within the meaning of Section 13(c) of the La-Guardia Act is Washington, D. C., where obviously there is no controversy concerning terms or conditions of employment or the representation of persons in negotiating, fixing, etc., *terms or conditions of employment*. Not only is the present case *not* concerned with collective bargaining with a particular employer or set of employers, but there is no employer in the picture at all, proximate or non-proximate, bearing in mind the essential nature of the present suit as a suit against the principal officers of the A. F. of L. and the Teamsters Union to require them to live up to two contracts. In *Virginian Rwy.* v. *System Federation*, 300 U. S. 515, 562-563, this Court, noting that the suit requested a mandatory injunction to compel "treating with" and employees' organization held that the La-Guardia Act did not apply. The *Virginian Rwy.* case is certainly much nearer representation of men for collective bargaining purposes than the present case.

We reiterate that the present injunction simply restrains the named defendants, officers of the A. F. of L. and the Teamsters Union in Washington, D. C., from carrying out the illegal decision of the 1933 Convention. An inspection

of the injunction (R. 2689) will show that the Teamsters Union is only restrained from acts of coercion, etc., insofar as such acts are committed "on the ground of the said decision of the A. F. of L. of 1933" and from causing discharges because the particular person "failed to join the Teamsters Union under the illegal order of the A. F. of L. of 1933" (R. 2689). Likewise the named defendants are enjoined from encouraging acts of coercion and from organizational activities insofar as such acts and activities constitute "attempting to carry out" the decisions of the 1933 Convention, "by notifying any brewery employees of said decision" (R. 2690). A careful reading of the injunction will show that it is restricted entirely to activities concerned with the carrying out of the illegal 1933 decision. It does not restrain the Teamsters Union, still less their locals or their individual members from organizing beer drivers out in the "allowable area of economic conflict."

We feel, therefore, that no "labor dispute" is involved within the meaning of the LaGuardia Act. As a protection, however, petitioners obtained LaGuardia Act findings, which are criticized as to notice, evidence, etc., by the court below. Due to space limitations we cannot discuss here the validity of these findings. We can only rely on the succinct dissenting opinion of Mr. Justice Stephens (R. 2796) and further point out that there being substantial evidence in their support, Rule 52(a) prevents the court below setting them aside.

IX.

The A. F. of L. Should Rightly Be Estopped From Dismembering Petitioners' Union.

It is in evidence herein, with a specific Finding of Fact, that the A. F. of L. since 1887 has accepted dues from the Brewery Workers Union in amount totalling over $137,000 (Finding of Fact 60, R. 1689). This money, in part, has

been used to develop the A. F. of L. and even to develop the later incoming Teamsters Union. The court below, under these circumstances, should have held the A. F. of L. estopped to transfer the beer drivers when over such a long period of time it had accepted the benefits of their membership in the Brewery Workers Union. Particularly is this so when we consider that from at least 1913 to 1933 industrial peace reigned within the brewing industry already 98% organized. In addition, since 1915 the Teamsters conceded the beer drivers properly held membership in the Brewery Workers Union. The decision of 1933, out of a clear sky, surrounded with suspicious circumstances, produced in part by Tobin's fraud, should, in addition to other factors, have led the court below to a quick affirmance. This is particularly true when the proof herein shows the Brewery Workers Union have obtained for the beer drivers the highest wage scale of any motor truck drivers in the United States as shown by a recent survey of the United States Department of Labor (Plaintiff's Exhibit 120, R. 2046). The decision below seems unreasonable, oppressive, and certainly contrary to the best interests of the individual beer drivers who have asserted their rights herein.

Conclusion.

It is respectfully submitted that the petition should be granted and the judgment below reversed.

Respectfully submitted,

MARTIN F. O'DONOGHUE,
WILLIAM J. HUGHES, JR.,
THOMAS X. DUNN,
NICHOLAS J. CHIASCIONE,
Washington, D. C.,
Counsel for Petitioners.

(4840)

FILED
JUL 26 1941
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1941.

No. 163.

JOSEPH OBERGFELL, PETER BOLLENBACHER, ALBERT J. KUGLER, INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL AND SOFT DRINK WORKERS OF AMERICA et al.,

Petitioners,

vs.

WILLIAM GREEN, FRANK MORRISON, JOHN COEFIELD, THE AMERICAN FEDERATION OF LABOR and THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, STABLEMEN AND HELPERS et al.

BRIEF

In Opposition to Petition for Writ of Certiorari to the United States Court of Appeals for the District of Columbia.

JOSEPH A. PADWAY,
HENRY KAISER,
736 Bowen Building,
Washington, D. C.,
Counsel for Respondents.

St. Louis Law Printing Co., 415 North Eighth Street. CEntral 4477.

INDEX.

	Page
The petition and supporting brief violate rules and decisions of this court	1
Petitioners misstate basic issue	3
"The questions presented" are not raised by instant record	8
"Petitioners' statement of facts" is inaccurate and incomplete	10
"Reasons for the allowance of writ" are inadequate	11
Improbability of error in decision of court below	13
Conclusion	17

Cases Cited.

Brotherhood of Railway Trainmen et al. v. Williams, 211 Ky. 638, 277 S. W. 500	8
Davis v. Currie, 266 U. S. 182	2, 5
Erie R. R. Co. v. Kirkendall, 266 U. S. 185	3
Furness-Withy & Co. v. Yang Tsze Insurance Association, 242 U. S. 430	2
Gonzales v. Roman Catholic Archbishop of Manilla, 280 U. S. 1, 74 L. Ed. 1	14
In the Matter of Aluminum Company of America, 1 N. L. R. B. 530	15
The Matter of the Axton-Fisher Tobacco Co., 1 N. L. R. B. 604	16
United States v. Johnston, 268 U. S. 220	10
United States v. Rimer, 220 U. S. 547	3
Watson v. Jones, 13 Wallace 679	14

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1941.

No. 163.

JOSEPH OBERGFELL, PETER BOLLENBACHER, ALBERT J. KUGLER, INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL AND SOFT DRINK WORKERS OF AMERICA et al.,

Petitioners,

vs.

WILLIAM GREEN, FRANK MORRISON, JOHN COEFIELD, THE AMERICAN FEDERATION OF LABOR and THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, STABLEMEN AND HELPERS et al.

BRIEF

In Opposition to Petition for Writ of Certiorari to the United States Court of Appeals for the District of Columbia.

The Petition and Supporting Brief Violate Rules and Decisions of This Court.

The merest reading of the petition and supporting brief indicates that they do not comply with either the letter or the spirit of the rules and decisions governing the same. Indeed, they are so flagrantly violative of those rules and decisions as to compel the conclusion, and we reach it advisedly, of a grossly careless disregard for the process of this Honorable Court.

In the case of **Furness-Withy & Co. v. Yang Tsze Insurance Association,** 242 U. S. 430, to which express reference is made in Rule 38, this Court said, with reference to petitions and supporting briefs of the kind here involved, the following (p. 434):

> "We are not aided by oral arguments, and necessarily rely in an especial way upon petitions, replies, and supporting briefs. Unless these are carefully prepared, contain **appropriate** references to the record, and present with **studied accuracy, brevity, and clearness** whatever is essential to ready and adequate understanding of points requiring our attention, the rights of interested parties may be prejudiced and the court will be impeded in its efforts properly to dispose of the causes which constantly crowd its docket." (This Court's emphasis.)

The foregoing pronouncement is strikingly applicable to the instant petition and supporting brief. That respondents are unduly prejudiced is readily demonstrable. Under the order of the court below, granting a stay of mandate (R. 2818), the filing of the instant petition has the effect of indefinitely continuing the injunction issued by the trial court—an injunction which the court below unanimously declared to have been improvidently issued and whose broad and drastic restrictions the court below unanimously condemned.

We would not mention this if the petition and supporting brief tended even remotely to apprise this Honorable Court of "the facts essential to an adequate appreciation of the situation" (**Furness et al. v. Yang Tsze Insurance Association,** supra, at page 431) and to "state the case presented at the bar" (**Davis v. Currie,** 266 U. S. 182). Petitioners, of course, have the right to seek a review by this Honorable Court of any decisions or principles they believe were erroneously pronounced by the court below, and ordinarily the continuance of any injunction would in no man-

ner—as, indeed, it should not—diminish that right. But where, as here, the very decision of the court below is misstated, not to mention a distorted presentation of the record, then that right has manifestly been abused to the prejudice of other parties, and the petition should be forthwith denied (**Erie R. R. Co. v. Kirkendall**, 266 U. S. 185; **United States v. Rimer**, 220 U. S. 547).

Out of consideration for this Court's valuable time, we shall not undertake to point out the exceedingly numerous misstatements of fact and miscitations of record contained in the petition and supporting brief. Instead, we shall seek to dwell upon the more flagrant and more important inaccuracies therein contained, and we shall for the sake of convenience discuss them, as far as possible, in the same order that they appear in the petition and supporting brief.

Petitioners Misstate Basic Issue.

The leading impression that petitioners have sought to leave with this Honorable Court throughout their petition and brief is that the court below has ruled that the respondent American Federation of Labor has the power, under its constitution, to compel the transfer of men against their will from one union to the other. Nothing is further from the truth. The American Federation of Labor has never claimed such power; it has never exercised such power—it could not, even if it desired to—and, naturally, the court below never passed on the existence or validity of an unclaimed, unexercised and unexercisable power.

The basic theory of petitioners' complaint (R. 58) was that a specific action of the American Federation of Labor in 1933 was beyond its powers and constituted a breach of an alleged contract between the Brewery Workers' Union and the American Federation of Labor. Accordingly, it prayed that the trial court, "by mandatory decree, declare

that the action of the Executive Council of the American Federation of Labor, of May 2, 1933, and of the 1933 Convention of the American Federation of Labor, as hereinabove set forth, is illegal, void and of no effect. * * *" And it prayed further that defendants be enjoined from "carrying out and enforcing" the above specified action of the American Federation of Labor (R. 110). The action was a decision by the Executive Council, approved by the Convention, which vested jurisdiction of beer drivers in the Teamsters' Union in the following language:

> "In the case of the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America v. The International Union of the United Brewery, Flour, Cereal and Soft Drink Workers of America, the Executive Council is of the opinion and decides that teamsters and chauffeurs in the brewery industry properly belong to and come under the jurisdiction of the International Brotherhood of Teamsters and Chauffeurs" (R. 356).

The power of the American Federation of Labor to render the foregoing decision, or, put otherwise, the power of the Federation to resolve and determine jurisdictional disputes between its affiliates is the basic issue in this case, as raised by petitioners themselves.

In response to that prayer, the trial court adjudged and decreed that the foregoing decision by the Executive Council and its adoption by the Convention be "declared illegal, null, void and of no effect" (R. 2688). Consequently, in addition to the foregoing declaratory judgment, it enjoined defendants from taking any steps in furtherance of the said decision of the Federation (R. 2689 et seq.).

From that judgment of the trial court respondents appealed to the Circuit Court of Appeals for the District of Columbia. The latter Court, concluding that "the American Federation of Labor acted within the scope of its dele-

gated constitutional power, and that no contractual or other rights of the Brewery Workers' Union were violated **by its decision of 1933**" (R. 2794) (emphasis supplied), reversed the judgment and dissolved the injunction issued by the trial court (R. 2797).

As an independent and additional reason for setting aside the injunction, the Court of Appeals for the District of Columbia concluded that the case involved a labor dispute within the meaning of the Norris-La Guardia Act, the requirements of which the trial court did not comply with. In other words, the court below made two distinct rulings: (1) that the 1933 decision of the Federation was lawful and, "this being true, there is no foundation for equitable relief or reason for judicial interference as regards any proper action by the Federation or the Teamsters' Union in carrying out that decision" (R. 2794), and (2) even if the Federation's 1933 decision was an unlawful act, nevertheless, the injunction was improvidently granted "because of lack of jurisdiction" as required by the Norris-La Guardia Act (R. 2777).

Thus, "the case presented at the bar" (**Davis v. Currie**, supra), the issues actually raised, and the precise determination of the lower court, are entirely clear. Yet, petitioners have seen fit, in the face of the rules and repeated decisions of this Court, to present this matter, composed of a cumbersome and complicated record of almost 3,000 pages, by way of petition for a writ of certiorari in a manner that can only obfuscate its true nature.

Petitioners state, "The real issue was the transfer of the 15,000 individual beer drivers, against their will, from the Brewery Workers' Union to the Teamsters by an order of the A. F. of L." (p. 21, petitioners' brief). This is untrue and unfounded.

No order of the American Federation of Labor in this

record, or anywhere else, presumes to direct any such thing. There is not a scintilla of evidence to establish that 15,000 men, or even one man, has been transferred or can be transferred against his will from the Brewery Workers' Union to the Teamsters' Union.

Manifestly, however, petitioners have no desire to limit themselves within the confines of the record in this case. They seek by sheer force of repetition[1] to convince this Honorable Court that the American Federation of Labor has, by its decision of 1933, compelled beer drivers against their will to transfer from the Brewery Workers' Union to the Teamsters' Union, with a consequent loss of valuable property rights, and to convince this Honorable Court that the court below has upheld this act of the Federation.

The fact is, of course, that the Federation's action in 1933 is no more than a declaration that a particular union —the Teamsters—is the only affiliate of the Federation that has the right to organize beer drivers. There is no compulsion to acquiesce in the declaration of the Federation, and failure to acquiesce will result in no property injury to any of the petitioners.

The Brewery Workers' Union has an absolute right to refuse compliance with the decision and leave the American Federation of Labor. If it does so, it takes with it its members, its property, and all its sick, death and unemployment funds; in short, it retains everything it has. Should the Brewery Workers' Union persist in flouting the decision of the Federation, and at the same time insist upon continued affiliation with the Federation, all the American Federation of Labor can do is to sever the Brewery Workers' Union from the family of the American

[1] Innumerable statements to the same effect as that quoted above appear throughout the petition and brief. See, for example, p. 2, twice on p. 4, three times on p. 5, p. 6, p. 8, p. 10, twice on p. 14, p. 15, p. 20, p. 21, p. 24, and elsewhere.

Federation of Labor. Should the Federation take this ultimate step, the Brewery Workers' Union would, of course, still retain intact all of its members, its funds, and its property.

The American Federation of Labor has never contended otherwise. It has no control over the membership, the locals, the contracts or other rights of the Brewery Workers' or any other International Union. For the refusal of any International Union to obey the decisions and decrees of the American Federation of Labor there can be nothing more than a severance of family ties. It has no enforcement powers. The American Federation of Labor takes nothing from such International, its members or affiliates, and, we repeat, it expressly disavows any right to take anything from them. To contend otherwise would be to deny the principle of voluntarism upon which the American Federation of Labor is founded, and to invade the autonomy of International Unions.

But even if the Federation should choose to ignore its own principle of voluntarism, it still would be helpless to enforce its own orders. The American Federation of Labor makes no pretentions to sovereign powers. The Congress of the United States has, in the National Labor Relations Act, 49 Stat. 449, 29 U. S. C. A. 151, guaranteed to workers their freedom of choice, and nothing that the American Federation of Labor would do or can do is superior to this basic statutory right. Regardless of whether the Brewery Workers' International remained in affiliation with the American Federation of Labor, or left the Federation of its own accord, or was expelled by the Federation, the beer drivers who are now its members could designate any union or representative, or no union or representative, as their collective bargaining agent, as was accurately recognized by the court below (R. 2794-5).

The true issue, of course, is whether the Federation has

the constitutional power to declare which of two contending affiliates has the right as an affiliate to organize a given class of workers. If, as the court below properly decided, the Federation has that power, then it matters not even if its exercise affects property rights. It is an elementary rule that the lawful exercise of power by a labor organization, even if it affects property rights, is nonactionable (**Brotherhood of Railway Trainmen et al. v. Williams**, 211 Ky. 638, 277 S. W. 500).

The issue of property rights arises only when and if it be decided that a labor organization has exceeded its powers. It must be shown that such excess of power has deprived a person of property rights in order to establish equity jurisdiction.

Accordingly, as an alternative argument, we urged before the court below that the action of the American Federation of Labor in 1933, even assuming it exceeded its power, did not deprive the plaintiffs of any property rights cognizable in a court of equity. Having sustained us in our major contention, namely, that the Federation acted within its power, the court below had no occasion to even mention this alternative contention.

Hence, although—as Mr. Justice Bailey ruled on the motion to dismiss (R. 30) the original bill of complaint (R. 1) —no "property rights in the real sense" (R. 57) are here presented, the entire issue of property rights is not now before this Court.

The "Questions Presented" Are Not Raised by Instant Record.

It follows from the foregoing that several of the major "questions presented" by the petitioners are not at all questions raised by this record. Thus, there is no occasion to ask this Court—as petitioners do in Question 1 (p. 5 of

petition)—whether the American Federation of Labor's constitution grants the Federation the power to "force a transfer of men from one union to another."

Similarly, Question 2 (p. 5 of petition) assumes what the record does not establish, namely, that the Federation has adopted an interpretation of its constitution which "compels the transfer of men from one union to another against their will, and thus destroys rights of liberty and property."

Only brief comment need be made as to the remaining alleged questions. Question 2 also contains an additional question, which refers to estoppel by acquiescence. Its applicability to this case is not clear to us, and certainly was not presented to the court below.

The third alleged question (pp. 5 and 6 of petition) is more argument than question. The court below has not passed on respondents' alleged "defense to the illegality" of any constitutional interpretation, since no such defense was presented.

Question 4 (p. 6 of petition) is, of course, no question at all, but a mere prolusory statement.

Question 5 (pp. 6 and 7 of petition) is more in the nature of a lengthy exhortation to a trial jury than a question presented to the Supreme Court of the United States on a petition for writ of certiorari. The alleged "fraud" of any individual defendant has never been, and certainly is not now, an issue in this case. The two "further" questions included by petitioners in Question 5 misstate the holding of the court below.

Question 6 (p. 7 of petition) does not involve a decision by the United States Court of Appeals for the District of Columbia of a "question of general importance" [Rule 38 (5) (c)]. "This Court does not ordinarily grant a writ of

certiorari to review evidence * * *" (**United States v. Johnston**, 268 U. S. 220). Moreover, the court below did not overturn any findings which were not clearly erroneous.

Question 7 (p. 7 of petition) includes four questions, several comments and one express contention—all dealing with the Norris-La Guardia Act. We have already pointed out that the court below expressly based its judgment on the merits of the case and dispensed with any necessity "to speculate as to whether sufficient showing could be made on new pleadings and a new trial so as to conform with the Norris-La Guardia Act" (R. 2794).

Petitioners' "Statement of Facts" Is Inaccurate and Incomplete.

It would be of little value to this Court to point to all of the many misstatements of fact and omission of important facts in petitioners' "Statement of Facts" (p. 8 et seq. of petition). We can safely rely upon the detailed opinion of the court below, which fully discusses all of the relevant facts. We note, briefly, petitioners' careful failure to mention the decisions of the Federation in 1903, 1904, 1905 and 1906, all awarding jurisdiction over beer drivers to the Teamsters, and all of which the Brewery Workers' Union refused to comply with, culminating in the expulsion of the Brewery Workers from the Federation in 1907, and its readmission only upon the clear understanding that jurisdiction over beer drivers was in the Teamsters (R. 609). The court below discusses this development and its implications on the instant case (R. 2786 et seq.).

We note, too, the many inaccurate and, we think, deliberately misleading references to the record made by petitioners in their "Statement of Facts." For example, petitioners assert that "the Chief of Detectives of Portland, Oregon, testified that the local police authorities were unable to give adequate protection, * * *" and in support

thereof refer this Court to "Finding of Fact 48, R. 1685-86" (p. 12 of petition).

A record reference to what a witness allegedly testified would, of course, normally be the testimony itself. The fact is that no such testimony was ever given. Characteristically, however, petitioners feel no restraint by this awkward fact. They blandly direct this Honorable Court's attention to a finding of fact made by the trial court, which the court below, after careful inquiry and discussion, found was without support in the record (R. 2775-76).

"Reasons for the Allowance of Writ" Are Inadequate.

The "reasons for the allowance of the writ" set forth by the petitioners are a continuation of their extensive arguments on the merits and, like the rest of the petition and brief, are replete with inaccurate and misleading record references. Although some four printed pages (pp. 13-17, incl., of petition) are devoted to these alleged reasons, and although these alleged reasons are numbered to the count of five, actually only one reason is presented, namely, the importance of the case. The remainder of the discussion is devoted, in effect, to a reassertion of and argument on the alleged errors committed by the court below.

And the one relevant reason that is presented is premised on the unfounded assumption that the order of the Federation forces "the transfer of men, against their will, from one union to another" (p. 14 of petition). We need not here repeat our remarks concerning the complete invalidity of that assumption.

We cannot complete our discussion of petitioners' alleged "reasons for the allowance of the writ" without remarking a most incredible device employed by petitioners in the course of discussing those "reasons." On

page 14 petitioners observe that the American Federation of Labor has, "in the case of the International Typographical Union, formally disavowed the holding of the court below," and in support thereof cite page 2802 of the record. Page 2802 of the record is a part of petitioners' petition for rehearing and stay of mandate filed with the court below. In that pleading petitioners quote from the Typographical Journal of March, 1941. Of course, this quotation was never offered at the trial and was never formally made a part of the record. It could not have been, because the trial was concluded over a year before that date. We shall soon show the erroneous construction given to this quotation by the petitioners. For the nonce, we emphasize the tactic of making a record reference which superficially appears to refer to the record upon which both the trial court and the court below made their decision.

The petitioners carry this device to an amazing extreme. On page 24 of their brief they state, "Lastly, since the judgment below, Green, as president, has notified the Brewery Workers' Union that unless it submits to the 'decision' it will be suspended (R. 2824)." Page 2824 of the record is part of petitioners' answer to a motion made by appellants below to vacate the order granting the stay of mandate. In the course of this answer, petitioners point to the steps that they think "would be undertaken" if the stay were vacated. One of the steps, according to petitioners' prophecy, would be

> "1. Suspension of the Brewery Workers' Union from the A. F. of L. The A. F. of L. has already notified appellees (since this Court's decision) that unless they submit they will be suspended."

The foregoing quotation, which is an unproved statement of counsel made in an argumentative pleading after the decision by the court below, is the basis for the statement as an established fact in petitioners' brief to this Honor-

able Court that "Green, as president, has notified the Brewery Workers' Union that * * * it will be suspended."

Improbability of Error in Decision of Court Below.

The quotation from the Typographical Journal aforementioned is set forth in full in petitioners' brief (pp. 31-33). Properly speaking, of course, what the American Federation of Labor has done elsewhere and at a date subsequent to the trial of this case is not a part of this case and should not have been presented to this Court by petitioners. However that may be, clear it is that on its face this statement in no way conflicts with any contention ever made by the American Federation of Labor in this case or elsewhere. The statement merely emphasizes the autonomy of each International affiliate over its own **internal** affairs. It does not say that the American Federation of Labor will not assume jurisdiction to settle jurisdictional disputes between two contending affiliates.

It is a fact, abundantly established by the record, that since its inception until the present day, a goodly portion of the Federation's energies and time is devoted to the resolution of these jurisdictional conflicts. And it is altogether fitting and proper that the duly designated officers of the Federation, who thus acquire a vast experience and expertness in settling such disputes, and not the courts, whose knowledge of the problems is necessarily limited, should resolve those conflicts.

In last analysis, that is the underlying issue in this case. Petitioners are seeking to remove this vital internal function of the American Federation of Labor to the civil courts. The court below reached its decision by applying the principle that courts will not ordinarily interfere with the internal affairs of voluntary associations (R. 2777).

This Honorable Court has consistently applied the same principle and has cogently stated some of the basic reasons for its development. Thus, in the leading case of **Watson v. Jones**, 13 Wallace 679, this Court said:

> "Nor do we see that justice would be likely to be promoted by submitting those decisions to review in the ordinary judicial tribunals. Each of these large and influential bodies * * * has a body of constitutional and ecclesiastical law of its own, to be found in their own written organic laws, their books of discipline, in their collections of precedents, in their usage and customs, which as to each constitute a system of ecclesiastical law and religious faith that takes the ablest minds to become familiar with. It is not to be supposed that the judges of the civil courts can be as competent in the ecclesiastical law and religious faith of all these bodies as the ablest men in each are in reference to their own. It would therefore be an appeal from the more learned tribunal in the law which should decide the case to one which is less so."

And again:

> "It is easy to see that if the civil courts are to inquire into all these matters, the whole subject of the doctrinal theology, the uses and customs, the written laws and the fundamental organization of every religious organization may, and must, be examined into with minuteness and care, for they would become in almost every case, the criteria by which the validity of the ecclesiastical decree would be determined by the civil court. This principle would deprive these bodies of the right of construing their own church laws, would open the way to all evils which we have depicted, * * * and would, in effect, transfer to the civil courts, where property rights were concerned, the decision of all ecclesiastical questions."

See, also, **Gonzales v. Roman Catholic Archbishop of Manilla**, 280 U. S. 1, 74 L. Ed. 1, which states that the same

considerations apply to "clubs and civil associations" as do to churches.

The analogy between the church and the American Federation of Labor, with respect to the basic principle of judicial noninterference, is complete. The bulky record in the instant case is largely composed of the "constitution," the "organic laws," the "precedents," the "usages," the "customs," and the like of the American Federation of Labor.

We think it is of especial significance that an administrative tribunal, expert in labor matters, has recognized the social value of the Federation's function in resolving jurisdictional disputes, and, though it is within its discretionary power so to do, has determined not to interfere with that function of the Federation.

In the Matter of Aluminum Company of America, 1 N. L. R. B. 530, the National Labor Relations Board, speaking of a jurisdictional dispute, said:

> "The Board feels that the question is not for it to decide. Such a question, involving solely and in a peculiar fashion the internal affairs of the American Federation of Labor and its chartered bodies, can best be decided by the parties themselves. The availability of the Board as a convenient forum for the airing of such problems would induce the parties to present them to the Board without first having made any real attempt to compose their differences among themselves. The consequent accumulation of cases on its docket would considerably hamper the work of the Board. Nor do we feel that the petitioner itself after a full consideration of the implications of its request would desire the Board to pass judgment upon such matters.
>
> "It is preferable that the Board should not interfere with the internal affairs of labor organizations.

Self-organization of employees implies a policy of self-management. The role that organizations of employees eventually must play in the structure established by Congress through that Act is a large and vital one. They will best be able to perform that role if they are permitted freely to work out the solutions to their own internal problems."

And again, in **The Matter of the Axton-Fisher Tobacco Co.**, 1 N. L. R. B. 604, the Board said:

"Both of the labor organizations involved in the instant cases are affiliated with the American Federation of Labor and possess charters from that body. In view of the structure of that body, the instant controversy is simply a dispute involving the internal affairs of a labor organization, here the American Federation of Labor. That dispute resembles the hundreds of other jurisdictional questions handled by the Federation and is clearly of a type which it has power to decide. There thus exists a body to which these two organizations belong and which has the authority to render a binding decision on the dispute between them. Under such circumstances, the Board is of the opinion that it should not intervene in the dispute for the reasons stated in the **Aluminum Company** case.

"It is perhaps unnecessary to point out that the internal dispute presented in these cases is merely one of many now existing within the American Federation of Labor and other organizations of labor. Some of these disputes, obviously difficult of solution, are far-reaching and fundamental to the labor movement; others are small by comparison. But in either case, it is preferable that in the light of the declared policy of Congress—'the exercise by workers of full freedom of association, self-organization and designation of representatives of their own choosing'—the Board should leave organizations of labor free to work out their own solutions through the procedure they themselves have established for that purpose."

CONCLUSION.

The opinion of the court below readily reflects its careful deliberation and thought for a period of almost a year. It is entirely consistent with all applicable authorities, including the precedents established by this Honorable Court. Where, as here, petitioners have failed completely in their burden of accurately presenting the case to this Court, the fact of improbability of error in the decision of the court below should remove any doubt as to the manner in which this Honorable Court should exercise its discretion in passing upon the petition for the writ. We respectfully submit that the petition be denied.

Respectfully submitted,

JOSEPH A. PADWAY,
HENRY KAISER,
736 Bowen Building,
Washington, D. C.,
Counsel for Respondents.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 163

JOSEPH OBERGFELL, PETER BOLLENBACHER, ALBERT J. KUGLER, INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL AND SOFT DRINK WORKERS OF AMERICA, ET AL.,

Petitioners,

vs.

WILLIAM GREEN, FRANK MORRISON, JOHN COEFIELD, THE AMERICAN FEDERATION OF LABOR AND THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, STABLEMEN AND HELPERS, ET AL.,

Respondents.

REPLY BRIEF.

MARTIN F. O'DONOGHUE,
WILLIAM J. HUGHES, JR.,
THOMAS X. DUNN,
NICHOLAS J. CHIASCIONE,
Attorneys for Petitioners.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 163

JOSEPH OBERGFELL, ET AL.,
Petitioners,

vs.

WILLIAM GREEN, ET AL.,
Respondents.

PETITIONERS' REPLY BRIEF.

I.

Respondents claim that the "Declaration of Jurisdiction" is not a transfer of men.

Respondents claim that petitioners' counsel has misstated the basic issue in the case in asserting that the so-called "declaration of jurisdiction" amounted, in effect, to a transfer of men from one union to another against their will. We are unable to understand this assertion as Mr. Padway, respondents' counsel, frankly took the position at the trial that the order was a transfer of men.

His position now is that the order is not a transfer of men; that the decision did not operate as a transfer because neither the union nor its members are compelled to obey it. If they disregarded the decision respondents' counsel said they could simply withdraw from the American Federation of Labor. His position therefore is that

the jurisdictional decision required petitioners to transfer their men to the Teamsters Union "or else". Hence, the "declaration of jurisdiction" amounted to a threat that petitioners would be expelled from the A. F. of L. if they did not observe the decision. Petitioners' position has been clear:

(1) The A. F. of L. is expressly prohibited, under its constitution, by virtue of Sec. 11, Art. IX, to change the established trade jurisdiction of an affiliated international union under the guise of a "jurisdictional decision".

(2) Compelling men to observe a "jurisdictional decision" by transferring them from one union to another or, in the alternative, making them lose substantial property rights i.e. in death, sick benefits, etc., in the union of their choice is, in effect, a transfer of men from one union to another.

That respondents' position at the trial was that the "jurisdictional decision" was a transfer "or else", the following statements by Mr. Padway at the trial shows:

> "Mr. Padway: * * * I am going to use the word 'transfer' now. Counsel will be pleased to see that certain transfers were to be made.
>
> "Yes, certain transfers to be made. I am not afraid to use that word. I say that no other construction can be placed on the effect of the order, but that it effects a transfer. And we will see what that means. To transfer by compliance and non-compliance are two different things. They do not have to comply. They can simply leave the organization. If they comply it does effect a transfer. We need not quibble about that at all. They were told to go out and adjust. They were to release and turn over to one another; they were to straighten out their jurisdiction." (R. 1544)

There is also a further statement of Mr. Padway:

> "Mr. Padway: What will be the effect of an order of this kind, if carried out? If the orders of the Ameri-

can Federation of Labor were carried out then the brewery workers would transfer its members to the teamsters, or vice versa.

"But the American Federation of Labor cannot effect the transfer. Why? Because Mr. Obergfell as an officer of his organization, and the other officers may say, 'We refuse to do it.' What can the American Federation of Labor do then? Can it send a single man over to the teamsters from the brewery workers if he does not want to go? It cannot. We neither claim nor do we say that jurisdiction vests in the American Federation of Labor. All the American Federation of Labor can do is impose certain penalties in line with its constitutional procedure upon the brewery workers. It can say 'You have not followed our decree to divest yourself of the jurisdiction of the teamsters in your organization. Consequently we will suspend you, expel you or pass it up.' We can do as we please.

"The use of the word 'transfer' is merely to designate the effect of a complied order, of an order that has been complied with. But let us bear in mind that the American Federation of Labor has not jurisdiction over a single individual of their organization. It can make no order respecting an individual. It can order the brewery workers to do something and if it doesn't do that, then they can take appropriate measures to impose whatever disciplinary action it pleases." (R. 729-30)

There was also a further colloquy:

"The Court: Suppose they didn't want to do that? Suppose they want to stay with the American Federation of Labor?

"Mr. Padway: Then we have the right to make these orders, and we have the right, if they want to stay with us, to say they must obey them.

"The Court: You say, as I understand it, that there is no difference whether they order them to affiliate with the teamsters or simply make a declaration of jurisdiction.

"Mr. Padway: You can call them orders or declarations or pronouncements, if you please.

"The Court: The first thing you know, you and I are going to agree about this thing of distinction between passing an order of transfer and declaring a question of jurisdiction. The effect is exactly the same.

"Mr. Padway: If your Honor please, the effect is the same, call it 'Order of transfer,' 'Jurisdictional award,' or whatever it may be, the effect of it is the same. I am not going to run away from that and stultify my own conscience making an argument before the Court that I know isn't so. The effect of it is the same, but the enforcibility, if the Court please, does not remain with the American Federation of Labor. In other words, suppose they have a fund of a million dollars or $100,000. The American Federation of Labor can't touch a dollar of it. The American Federation of Labor can't take their members either. They can leave and take all their members with them.

"The Court: You may be entirely right. I say you may be, because I haven't reached the slightest conclusion about this in my mind, but your argument, as I understand it, leads to this conclusion: That by virtue of this subterfuge the American Federation of Labor can do indirectly what the law won't permit it to do directly.

"Mr. Padway: The law will permit them to do it directly.

"The Court: I understood you to say it would not.

"Mr. Padway: Oh no.

"The Court: I understood you to say they could not pass an order which would transfer these members from one organization to another.

"Mr. Padway: Oh, they could if the Constitution permitted.

"The Court: But that is the question.

"Mr. Padway: Their constitution doesn't provide that the American Federation of Labor shall have powers of enforcement.

"The Court: But you are exercising them, aren't you?

"Mr. Padway: No, we are not.

"The Court: That is just what I mean. Isn't the effect of what the American Federation of Labor is actually doing—isn't the effect of it to make a transfer by subterfuge, and by so doing take jurisdiction over their men?

"Mr. Padway: Oh, not at all." (R. 1569-1570)

Respondents' counsel further conceded in the trial court that the order of the American Federation of Labor would cause irreparable harm, damage, and injury to the Brewery Workers.

"Mr. Padway: I would say this to you: If this order is improper on the part of the American Federation of Labor I certainly will not stand before this Court and say the brewery workers have not suffered irreparable damage. I will concede that. There is no question but what they have suffered irreparable damage, and therefore the question is immaterial. There is a logical legal inference if the American Federation of Labor has improperly and illegally, let us say granted jurisdiction of the members of the brewery workers to the teamsters, the brewery workers will suffer irreparable damages. One would have to stultify one's conscience to say otherwise." (R. 731-732)

A "jurisdictional award" which orders the transfer of men from one union to another "or else", is, we think, in effect, a transfer of men, and we have not misrepresented the matter in any way.

II.

The American Federation of Labor itself has consistently referred to the "Declaration of Jurisdiction" as a Transfer of Men.

A. Green-Ornburn Referendum.

The Green-Ornburn Referendum in 1934 taken by the A. F. of L. to ascertain the wishes of the Brewery Workers,

referred to the A. F. of L. program as a "transfer" of men. The proposition submitted to the members on the referendum ballots was as follows:

> "Shall the International Union (Brewery Workers Union) comply with the proposition submitted by President Green and I. M. Ornburn to the effect that beer drivers, and members of our International Union *be transferred* to the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers"? (R. 1757) (Italics ours.)

B. The 1900 Convention.

The Brewery Workers were admitted to the Federation in 1887 with beer drivers as part of their jurisdiction; some 13 years later the Teamsters were admitted in 1899. At the next Convention of the Federation at Louisville, Kentucky in 1900, the Teamsters submitted Resolution No. 16 (R. 492, 493):

> "Resolved, Conforming to the above, that the Convention directs the National Union of United Brewery Workers to instruct all * * * team drivers * * * employed in breweries whose trades are organized and affiliated herewith, to immediately join a legitimate union of their trade and to withdraw from membership in the National Union of United Brewery Workers."

This Resolution, together with Resolution 77 (R. 494) and Resolution 124 (R. 496) dealt with the question of the transfer of men from one union to another. The Grievance Committee that considered these resolutions stated:

> "We desire to further say that this convention cannot, in our opinion, presume by resolution or otherwise to *transfer* bodies of men from one organization to another, unless with their consent" (R. 497). (Italics ours.)

It was the same Grievance Committee that recommended the adoption of Sec. 11, Art. IX into the Federation's Constitution (R. 498-499).

Thus as far back as 1900 the A. F. of L. itself referred to a Resolution similar to the present "jurisdictional decision" as a transfer of men and held it had no such power, even under the guise of trade autonomy. It is this 41 year old decision which the Court of Appeals has overturned on the basis of the A. F. of L's. "large and comprehensive plan for the protection and benefit of toiling millions of laborers"! (R. 2781)

C. 1913 Convention Re Transfer of Men.

The 1913 Convention of the American Federation of Labor decided:

> "That brewery teamsters are nearly all organized into and holding voluntary membership in the Brewery Workers organization. On the facts established, we see no justification for the *transfer* of these men from the Brewery Workers Union and so decide." (R. 652) (Italics ours.)

After this decision by the Convention in 1913 President Samuel Gompers addressed a letter to Mr. Tobin, President of the Teamsters (R. 663). In this letter speaking of the 1913 decision Samuel Gompers said:

> "The decision of the Executive Council contemplates that as the brewery workers and brewery drivers have become peculiarly situated and identical, they should be members of the brewery workers International Union.
>
> "It is common knowledge that regardless of the efforts made by your International Brotherhood the brewery drivers have been practically all organized under the Brewery Workers International Union. That no matter what view anyone may entertain, it is an

> accomplished fact and admits of no doubt, and that regardless of what action to the contrary will be taken by your organization, and all other organized effort, so long as the brewery drivers desire to remain a part of the Brewery Workers International Union, and the latter will contend for the retention of these men in that organization, the status will remain as it now exists" (R. 664).

D. President Green of the Federation Supports "Transfer of Men" order.

In a letter addressed to the Cleveland Brewers Association of Cleveland, Ohio by President William Green of the American Federation of Labor, Plaintiff's Exhibit No. 25, (R. 1806-1807), in speaking of the "decision" of the American Federation of Labor Mr. Green said:

> "Team drivers employed by breweries are conforming to this decision of the American Federation of Labor when they become members of the International Brotherhood of Teamsters. * * * The management of the breweries are showing respect for the decisions of the American Federation of Labor and are complying with said decisions when they recognize the jurisdiction of the Teamsters, Engineers and Firemen's International Unions over their respective membership employed by brewery manufacturing plants" (R. 1807).

III.

Respondents contradict themselves when they state Federation can suspend the Brewery Workers for failure to comply with order.

Respondents admit that the American Fdeeration of Labor does not have the power under its Constitution to transfer a members of the Brewery Workers Union to the Teamsters Union (Respondents' Brief p. 5, 6). They unequivocally state that the Federation has no power over

the membership, the locals, the contracts, the funds, or other rights of the Brewery Workers or any other Internationals affiliated with the Federation on the grounds of autonomy (Respondents' Brief, p. 7).

As already seen they argue that the order of the American Federation of Labor is merely a declaration of jurisdiction and not an order of transfer. Yet, counsel for the Respondents conceded at the trial that whether you call the "'Order of Transfer' 'Jurisdictional Award' or whatever it may be the effect of it is the same" (R. 1569). While the order may be called a declaration of jurisdiction, nevertheless the effect of it is to transfer the men from one union to another (R. 1568-1569). It is a distinction in form, but in substance it is an order of transfer of men. The Trial Court decided that it was an order of transfer. As the Court stated:

> "Mr. Reyman: This is not a transfer. It is a decision as to what the jurisdiction is.
>
> "The Court: What is the difference? The difference is subtle—it is too subtle for my understanding. You can call it one thing, but a rose by any other name is just as sweet." (R. 351; see also R. 1569-70)

Counsel state in their brief and concede that the Federation does not have the power to control the membership, the funds, or contracts of any International Union, and yet at the same time attempt to argue that the Federation has the power to make an order that effectuates the transfer of men from one union to another under threat of suspension or expulsion. While they admit that the Federation cannot control the individual members of the Brewery Workers Union, or their property, nevertheless, they argue it can pass an order that would transfer the men from one union to another (thereby making them lose their

sick, death and out-of-work benefits) if the men wish to stay in the A. F. of L. Such logic is intrinsically contradictory.

IV.

Respondents' Criticism of Form of Petition.

Petitioners have carefully reexamined their petition in the light of respondents' criticism of its form and feel that they have accurately set forth the Questions Presented. The matter involved is complex and questions presented are not necessarily the surface questions but the underlying implications and effect of the extraordinary decision below.

As to respondents' charge (respondents' brief, page 10) that petitioners are guilty of "many inaccurate and, we think, deliberately misleading references to the record", petitioners' counsel has been a member of the Bar of this Court since 1923, has filed many petitions and briefs herein and has never yet been accused of any such misconduct here or in any other court. The example given by respondents that the Chief of Detectives of Portland, Oregon, did not testify that the local police authorities were unable to give adequate protection is answered by the record (R. 836) wherein the Chief of Detectives stated that as a result of the Teamsters' activities in Portland "there was a reign of terror, window smashing, beat-ups, bombings." This witness put in evidence a few of the confessions of the Teamsters' thugs (over 50 of whom were convicted and sent to jail) (R. 847) which showed on their face the inadequacy of police protection (R. 846, 847, 850).

As to respondents' criticism of the "incredible device" of petitioners in referring to a report of the Executive Council of the A. F. of L., dated February 21, 1941, in the case of the International Typographical Union, which report repudiated the decision below and held that the

A. F. of L. had no power to make a "jurisdictional decision" such as the present one, this report was presented to the court below and made a part of the present record as part of a Petition for Rehearing filed below. Petitioners were fully justified in presenting this data to the court below and to this Court. The court below on the basis of this report might have remitted the case to the trial court for reconsideration. (*National Brake & Electric Co.* v. *Christensen*, 254 U. S. 425). Likewise this Court could consider the report to determine whether, under Rule 38 (4) (c) the court below had decided a question of general importance. If respondents questioned the authenticity of the report or its relevancy to the decision below, they had their opportunity in the court below.

Conclusion.

The trial court repeatedly asked respondents' counsel to cite an instance wherein the A. F. of L. had ever taken jurisdiction from a senior affiliated union and given it to a later incoming union. No such instance could be cited (R. 1152). Under the subterfuge of a "declaration of jurisdiction", coupled with the implied threat of suspension of expulsion for non-compliance, the A. F. of L. has attempted to compel the transfer of free workers from a union of their choice to another. Thus a worker who desires to remain in a union affiliated with the A. F. of L. will be compelled to join a union not of his choice and to forfeit sick, death, and out-of-work benefits in the union to which he already belongs (R. 1664). Such a program, validated by the court below, is a form of fascism, of highly improbable legality under the Constitution of the American Federation of Labor and vicious and illegal under the Constitution of the United States.

The right of liberty, the right of property and the right of contract is more inbred in the American people

than in any other people in the world. The right of a laboring man to join and remain in a union of his own choosing is a right of liberty and of contract that should be zealously guarded and protected. The rights of liberty and of contract of the 15,000 beer drivers are at stake in the issue presented in this petition. Human rights as well as rights of property are deeply involved. The right of these men to remain in a union of their own choosing and to protect their rights of property in their local unions is at issue—or shall they be compelled to move from one union to another as if they were mere chattels or articles of commerce, instead of human beings?

It is respectfully submitted that the petition below should be granted.

MARTIN F. O'DONOGHUE,
WILLIAM J. HUGHES, JR.,
THOMAS X. DUNN,
NICHOLAS J. CHIASCIONE,
Attorneys for Petitioners.

(6359)